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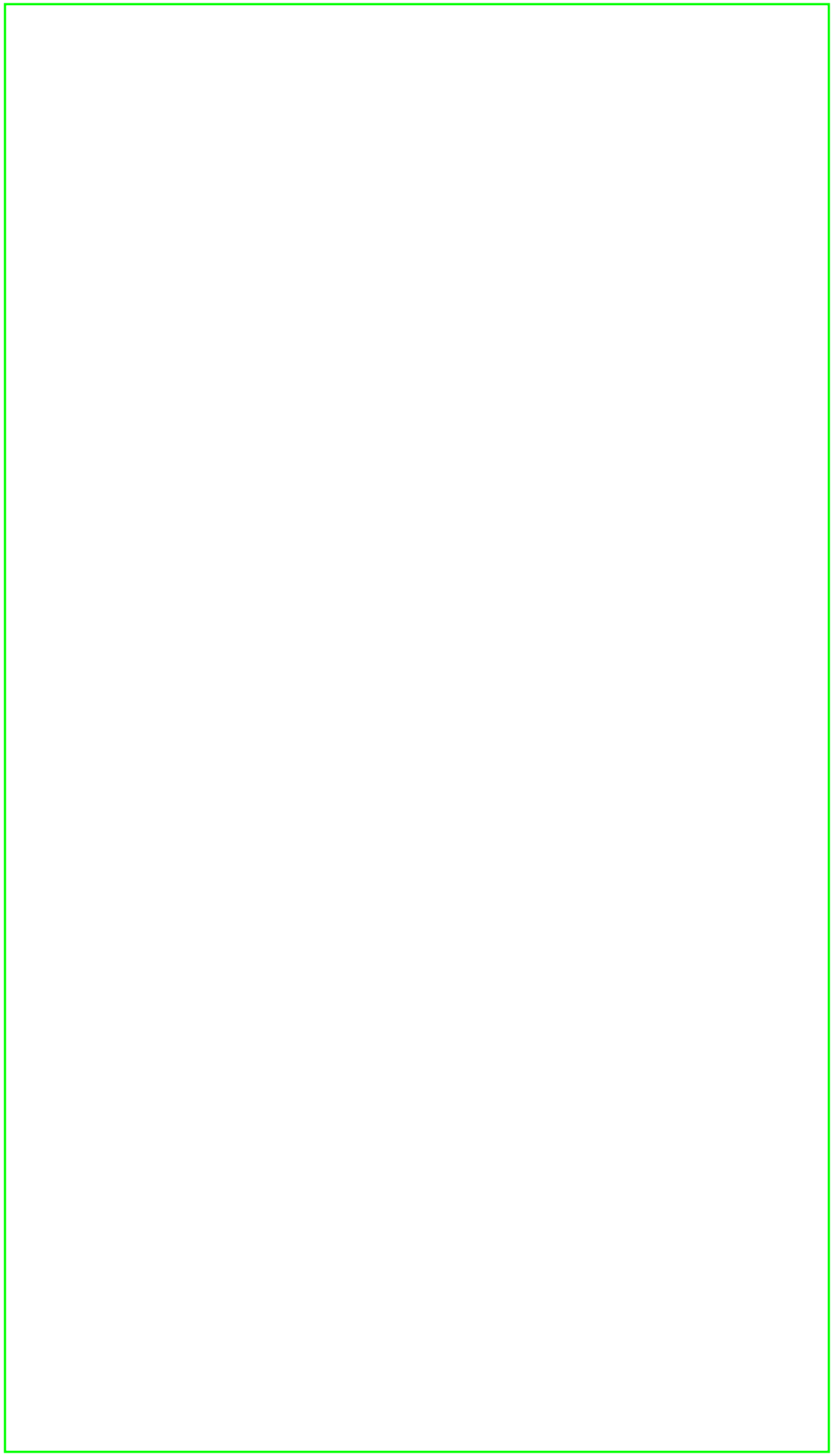

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OF
NEBRASKA

2010 CUMULATIVE SUPPLEMENT

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CHAPTER 44
INSURANCE

Article.

ARTICLE 1

POWERS OF DEPARTMENT OF INSURANCE

44-165 Financial conglomerate; supervision on consolidated basis; director; powers; duties; application fee; violation; enforcement powers; administrative penalty; unfair trade practice; criminal penalty; appeal; expenses of supervision.

(1)(a) A financial conglomerate may submit to the jurisdiction of the Director of Insurance for supervision on a consolidated basis under this section. Supervision under this section shall be in addition to all statutory and regulatory requirements imposed on domestic insurers and shall be for the purpose of determining how the operations of the financial conglomerate impact insurance operations.

(b) For purposes of this section:

(i) Control has the same meaning as in section 44-2121; and

(ii) Financial conglomerate means either an insurance company domiciled in Nebraska or a person established under the laws of the United States, any state, or the District of Columbia which directly or indirectly controls an insurance company domiciled in Nebraska. Financial conglomerate includes the person applying for supervision under this section and all entities, whether insurance companies or otherwise, to the extent the entities are controlled by such person.

(2) The director may approve any application for supervision under this section that meets the requirements of this section and the rules and regulations adopted and promulgated under this section.

(3)(a) The director shall adopt and promulgate rules and regulations for supervision of a financial conglomerate, including all persons controlled by a financial conglomerate, that will permit the director to assess at the level of the financial conglomerate the financial situation of the financial conglomerate, including solvency, risk concentration, and intra-group transactions.

(b) Such rules and regulations shall require the financial conglomerate to:

(i) Have in place sufficient capital adequacy policies at the level of the financial conglomerate;

(ii) Report to the director at least annually any significant risk concentration at the level of the financial conglomerate;

(iii) Report to the director at least annually all significant intra-group transactions of regulated entities within a financial conglomerate. Such reporting shall

be in addition to all reports required under any other provision of Chapter 44; and

(iv) Have in place at the level of the financial conglomerate adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(c) In adopting and promulgating the rules and regulations, the director:

(i) Shall consider the rules and regulations that may be adopted by a member state of the European Union, the European Union, or any other country for the supervision of financial conglomerates;

(ii) Shall require the filing of such information as the director may determine;

(iii) Shall include standards and processes for effective qualitative group assessment, quantitative group assessment including capital adequacy, affiliate transaction, and risk concentration assessment, risks and internal capital assessments, disclosure requirements, and investigation and enforcement powers;

(iv) Shall state that supervision of financial conglomerates concerns how the operations of the financial conglomerate impact the insurance operations;

(v) Shall adopt an application fee in an amount not to exceed the amount necessary to recover the cost of review and analysis of the application; and

(vi) May verify information received under this section.

(4)(a) If it appears to the director that a financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, willfully violates this section or the rules and regulations adopted and promulgated under this section, the director may order the financial conglomerate to cease and desist immediately any such activity. After notice and hearing, the director may order the financial conglomerate to void any contracts between the financial conglomerate and any of its affiliates or among affiliates of the financial conglomerate and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

(b) If it appears to the director that any financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, has committed or is about to commit a violation of this section or the rules and regulations adopted and promulgated under this section, the director may apply to the district court of Lancaster County for an order enjoining such financial conglomerate, director, officer, employee, or agent from violating or continuing to violate this section or the rules and regulations adopted and promulgated under this section and for such other equitable relief as the nature of the case and the interest of the financial conglomerate's policyholders, creditors, or the public may require.

(c)(i) Any financial conglomerate that fails, without just cause, to provide information which may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of one hundred dollars for each day's delay not to exceed an aggregate penalty of ten thousand dollars. The director may reduce the penalty if the financial conglomerate demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the financial conglomerate.

(ii) Any financial conglomerate that fails to notify the director of any action for which such notification may be required under the rules and regulations adopted and promulgated under this section may be required by the director,

after notice and hearing, to pay an administrative penalty of not more than two thousand five hundred dollars per violation.

(iii) Any violation of this section or the rules and regulations adopted and promulgated under this section shall be an unfair trade practice under the Unfair Insurance Trade Practices Act in addition to any other remedies and penalties available under the laws of this state.

(d) Any director or officer of a financial conglomerate that submits to the jurisdiction of the director under this section who knowingly violates or assents to any officer or agent of the financial conglomerate to violate this section or the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay in his or her individual capacity an administrative penalty of not more than five thousand dollars per violation. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(e) After notice and hearing, the director may terminate the supervision of any financial conglomerate under this section if it ceases to qualify as a financial conglomerate under this section or the rules and regulations adopted and promulgated under this section.

(f) If it appears to the director that any person has committed a violation of this section or the rules and regulations adopted and promulgated under this section which so impairs the financial condition of a domestic insurer that submits to the jurisdiction of the director under this section as to threaten insolvency or make the further transaction of business by such financial conglomerate hazardous to its policyholders or the public, the director may proceed as provided in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to take possession of the property of such domestic insurer and to conduct the business thereof.

(g) If it appears to the director that any person that submits to the jurisdiction of the director under this section has committed a violation of this section or the rules and regulations adopted and promulgated under this section which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the director may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as the director finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

(h)(i) Any financial conglomerate that submits to the jurisdiction of the director under this section that willfully violates this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(ii) Any director, officer, employee, or agent of a financial conglomerate that submits to the jurisdiction of the director under this section who willfully violates this section or the rules and regulations adopted and promulgated under this section or who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the director in the performance of his or her duties under this

section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(iii) Any person aggrieved by any act, determination, order, or other action of the director pursuant to this section or the rules and regulations adopted and promulgated under this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(iv) Any person aggrieved by any failure of the director to act or make a determination required by this section or the rules and regulations adopted and promulgated under this section may petition the district court of Lancaster County for a writ in the nature of a mandamus or a peremptory mandamus directing the director to act or make such determination forthwith.

(i) The powers, remedies, procedures, and penalties governing financial conglomerates under this section shall be in addition to any other provisions provided by law.

(5)(a) The director may contract with such qualified persons as the director deems necessary to allow the director to perform any duties and responsibilities under this section.

(b) The reasonable expenses of supervision of a financial conglomerate under this section shall be fixed and determined by the director who shall collect the same from the supervised financial conglomerate. The financial conglomerate shall reimburse the amount upon presentation of a statement by the director. All money collected by the director for supervision of financial conglomerates pursuant to this section shall be remitted in accordance with section 44-116.

(c) All information, documents, and copies thereof obtained by or disclosed to the director pursuant to this section shall be held by the director in accordance with sections 44-154 and 44-2138.

Source: Laws 2008, LB855, § 50.

Cross References

Administrative Procedure Act, see section 84-920.
Insurers Supervision, Rehabilitation, and Liquidation Act, Nebraska, see section 44-4862.
Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 2

LINES OF INSURANCE, ORGANIZATION OF COMPANIES

Section
44-211. Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.

44-211 Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.

The business and affairs of an insurance corporation shall be managed by the incorporators until the first meeting of shareholders or members and then and thereafter by a board of directors elected by the shareholders or members and as otherwise provided by law. The board of directors shall consist of not less than five persons, and one of them shall be a resident of the State of Nebraska. At least one-fifth of the directors of an insurance company, which is not subject to section 44-2135, shall be persons who are not officers or employees of such company. A person convicted of a felony may not be a director, and all

directors shall be of good moral character and known professional, administrative, or business ability, such business ability to include a practical knowledge of insurance, finance, or investment. No person shall hold the office of director unless he or she is a policyholder, if the company is a mutual company or assessment association. Unless otherwise provided in the articles of incorporation, the board of directors shall make all bylaws. A director shall discharge his or her duties as a director in accordance with section 21-2095.

Source: Laws 1913, c. 154, § 82, p. 429; R.S.1913, § 3219; Laws 1919, c. 190, tit. V, art. V, § 5, p. 609; C.S.1922, § 7818; C.S.1929, § 44-405; R.S.1943, § 44-211; Laws 1953, c. 145, § 1, p. 469; Laws 1959, c. 195, § 1, p. 702; Laws 1961, c. 212, § 1, p. 630; Laws 1965, c. 255, § 1, p. 722; Laws 1967, c. 263, § 1, p. 706; Laws 1989, LB 92, § 57; Laws 1991, LB 236, § 35; Laws 1999, LB 259, § 2; Laws 2007, LB191, § 2.

ARTICLE 3

GENERAL PROVISIONS RELATING TO INSURANCE

Section

44-319.07 Securities; exchange; withdrawal; approval of director; forfeiture for failure to comply.

(1) The depositing insurer or assessment association may, from time to time, exchange for the deposited securities, or any of them, other securities eligible for deposit if the aggregate value of such deposit will not thereby be reduced below the amount required by sections 44-319.01 to 44-319.13. Upon application of the depositing insurer or assessment association, the director may approve the withdrawal of securities which are in excess of the amount required by sections 44-319.01 to 44-319.13. Insurers and assessment associations may, upon an application approved by the director, withdraw all or any part of the securities so deposited upon good cause therefor being shown. Securities so withdrawn shall, except if withdrawn as the result of a merger, consolidation, or total reinsurance, be used to pay excess losses only and shall be restored within such time and under such conditions as the director may direct by order.

(2) If the depositing insurer or assessment association fails to comply with the requirements of subsection (1) of this section or the rules and regulations adopted and promulgated pursuant to section 44-319.11, such insurer or assessment association shall forfeit five hundred dollars for each such failure. The director shall collect and remit the forfeitures to the State Treasurer for

distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1955, c. 174, § 7, p. 500; Laws 2007, LB117, § 2.

44-320 Domestic company; officers and directors; borrowing and sales to company prohibited; exception.

(1) Except as provided in subsections (2) through (6) of this section, no director or officer of any domestic insurance company shall directly or indirectly receive any money or valuable consideration for negotiating any loan for the company or for selling or aiding in the sale of any property to or by the company and no such director or officer shall directly or indirectly borrow money from, purchase any property from, or sell any property to the company.

(2)(a) Nothing in this section shall prevent any domestic insurance company from making a loan to an officer of the company for the purchase of a principal residence or acquiring the principal residence of an officer in connection with the relocation of the officer's place of employment at the request of the company either during the course of employment or upon initial employment of such officer. Any loan permitted under this subsection shall be secured by a first trust deed or first mortgage and shall not exceed seventy-five percent of the market value of the property. Any acquisition permitted under this subsection shall not exceed the market value of the property.

(b) For purposes of this subsection, market value shall mean the market value of real estate as determined by a real property appraiser credentialed by the Real Property Appraiser Board.

(c) Any loan or acquisition permitted under this subsection shall be subject to (i) the approval of the domestic insurance company's board of directors or a delegated committee of the company and (ii) prior written approval of the Director of Insurance based upon written application by the company including full and fair disclosure of the terms of the transaction. Approval of such transaction by the Director of Insurance shall be presumed unless notice of disapproval is received by the applicant within thirty days of the filing of the application. Approval of such transaction may be denied if the director finds that it is not in the best interest of the company or that the terms of the transaction are not fair and reasonable to the company.

(3) Nothing in this section shall prevent any director or officer of any domestic insurance company from purchasing from his or her company an insurance policy or annuity contract if (a) the purchase is in the ordinary course of the company's business and subject to all of the requirements normally imposed by the company in the sale of such policies and contracts and (b) no discount granted to the director or officer in connection with the purchase is greater than discounts provided to other employees of the company in connection with the sale of similar policies and contracts.

(4) Nothing in this section shall prevent any director or officer of any domestic insurance company from purchasing from his or her company surplus personal property having a total purchase price not in excess of ten thousand dollars in any calendar year if the personal property is sold to the director or officer at not less than its fair market value.

(5) Nothing in this section shall prevent any director or officer of any domestic insurance company from selling to his or her company property of any type or nature having a total purchase price not in excess of ten thousand

dollars in any calendar year if the sale is in the ordinary course of business of the director's or officer's business and if the property is sold to the company at not more than its fair market value.

(6) Except as otherwise provided in this section, if any director or officer of any domestic insurance company desires to borrow money from, purchase any property from, or sell any property to the company in excess of ten thousand dollars in any calendar year, the company shall file an application with the Director of Insurance requesting written approval to engage in such transaction. The application shall set out the names of all of the parties interested in the transaction and the respective percentage of interest of each party, a brief description of the nature of the transaction, and a full disclosure of all consideration given or received by the company in connection with such transaction. The application shall be a public record open to public inspection from the date of filing. If the transaction is not approved or disapproved by the director within thirty days from the date of filing, the transaction shall be deemed disapproved. In determining whether to approve or disapprove such transaction, the director shall consider the following factors:

(a)(i) The fact that the transaction has been disclosed or made known to the board of directors of the company or a delegated committee of the company which must authorize approval or ratify the transaction by a vote or consent sufficient for the purpose without counting the vote or consent of any interested director or officer; and

(ii) If applicable, the fact of such transaction has been disclosed or made known to the shareholders entitled to vote and they authorize approval or ratify such transaction by vote or written consent; or

(b)(i) The transaction is fair and reasonable to the company; and

(ii) The transaction is of a nature normally engaged in by the company and the consideration is fair and reasonable.

(7) The Director of Insurance may proceed in a court of competent jurisdiction against a domestic insurance company to reverse or hold invalid a transaction made in violation of subsection (6) of this section unless the transaction was approved pursuant to such subsection.

(8) In addition to other remedies and penalties available under the law of this state, each violation of this section shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Source: Laws 1913, c. 154, § 43, p. 417; R.S.1913, § 3179; Laws 1919, c. 190, tit. V, art. IV, § 14, p. 595; C.S.1922, § 7779; C.S.1929, § 44-314; R.S.1943, § 44-320; Laws 1953, c. 149, § 1(1), p. 477; Laws 1988, LB 713, § 1; Laws 1991, LB 237, § 59; Laws 1991, LB 234, § 1; Laws 2006, LB 778, § 4.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-349 Policy or contract; statement required.

No policy or contract of insurance or renewal thereof shall be made, issued, used, or delivered by any assessment insurer in this state unless it states on its face that it is issued by an assessment insurer.

Source: Laws 1913, c. 154, § 136, p. 466; R.S.1913, § 3273; Laws 1919, c. 190, tit. V, art. XI, § 1, p. 647; C.S.1922, § 7880; C.S.1929, § 44-1101; R.S.1943, § 44-349; Laws 1959, c. 201, § 1, p. 711; Laws 2008, LB855, § 3.

44-356 Policies; violations; penalty.

(1) A violator of any of the provisions of section 44-353 shall be fined not more than one hundred dollars.

(2) A violation of any of the provisions of section 44-354 or 44-355 shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Source: Laws 1913, c. 154, § 71, p. 424; R.S.1913, § 3207; Laws 1919, c. 190, tit. V, art. IV, § 41, p. 603; C.S.1922, § 7806; C.S.1929, § 44-341; R.S.1943, § 44-356; Laws 1989, LB 92, § 103; Laws 2008, LB855, § 4.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-371 Annuity contract; insurance proceeds and benefits; exempt from claims of creditors; exceptions.

(1)(a) Except as provided in subdivision (1)(b) of this section, all proceeds, cash values, and benefits accruing under any annuity contract, under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured, or under any accident or health insurance policy shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the insured and of the beneficiary if related to the insured by blood or marriage, unless a written assignment to the contrary has been obtained by the claimant.

(b) Subdivision (1)(a) of this section shall not apply to:

(i) An individual's aggregate interests greater than one hundred thousand dollars in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual; and

(ii) An individual's interest in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual, to the extent that the loan values or cash values of any matured or unmatured life insurance contract or the proceeds, cash values, or benefits accruing under any annuity contract were established or increased through contributions, premiums, or any other payments made within three years prior to bankruptcy or within three years prior to entry against the individual of a money judgment which thereafter becomes final.

(c) An insurance company shall not be liable or responsible to any person to determine or ascertain the existence or identity of any such creditors prior to payment of any such loan values, cash values, proceeds, or benefits.

(2) Notwithstanding subsection (1) of this section, proceeds, cash values, and benefits accruing under any annuity contract or under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured shall not be exempt from attachment, garnishment, or other legal or equitable process by a judgment creditor of the beneficiary if the judgment against the beneficiary was based on, arose from, or was related to an act, transaction, or course of conduct for which the beneficiary has been convicted by any court of a crime punishable only by life imprisonment or death. No insurance company shall be liable or responsible to any

person to determine or ascertain the existence or identity of any such judgment creditor prior to payment of any such proceeds, cash values, or benefits. This subsection shall apply to any judgment rendered on or after January 1, 1995, irrespective of when the criminal conviction is or was rendered and irrespective of whether proceedings for attachment, garnishment, or other legal or equitable process were pending on March 14, 1997.

Source: Laws 1933, c. 73, § 1, p. 315; C.S.Supp.,1941, § 44-1130; R.S. 1943, § 44-371; Laws 1980, LB 940, § 4; Laws 1981, LB 327, § 1; Laws 1987, LB 335, § 1; Laws 1997, LB 47, § 1; Laws 2005, LB 465, § 3.

44-3,144 Health care coverage of children; terms, defined.

For purposes of sections 44-3,144 to 44-3,150:

(1) Authorized attorney has the same meaning as in section 43-512;

(2) Child means an individual to whom or on whose behalf a legal duty of support is owed by an obligor;

(3) Department means the Department of Health and Human Services;

(4) Employer means an individual, a firm, a partnership, a corporation, an association, a union, a political subdivision, a state agency, or any agent thereof who pays income to an obligor on a periodic basis and has or provides health care coverage to the obligor-employee;

(5) Health care coverage means a health benefit plan or combination of plans, including fee for service, health maintenance organization, preferred provider organization, and other types of coverage available to either party, under which medical services could be provided to dependent children, other than public medical assistance programs, that provide medical care or benefits;

(6) Insurer means an insurer as defined in section 44-103 offering a group health plan as defined in 29 U.S.C. 1167, as such section existed on January 1, 2002;

(7) Medical support means the provision of health care coverage, contribution to the cost of health care coverage, contribution to expenses associated with the birth of a child, other uninsured medical expenses of a child, or any combination thereof;

(8) Medical assistance program means the program established pursuant to the Medical Assistance Act;

(9) National medical support notice means a uniform administrative notice issued by the county attorney, authorized attorney, or department to enforce the medical support provisions of a support order;

(10) Obligee has the same meaning as in section 43-3341;

(11) Obligor has the same meaning as in section 43-3341;

(12) Plan administrator means the person or entity that administers health care coverage for an employer;

(13) Qualified medical child support order means an order that meets the requirements of 29 U.S.C. 1169, as such section existed on January 1, 2002; and

(14) Uninsured medical expenses means the reasonable and necessary health-related expenses that are not paid by health care coverage.

Source: Laws 1994, LB 1224, § 72; Laws 1996, LB 1044, § 234; Laws 1997, LB 307, § 103; Laws 2002, LB 1062, § 6; Laws 2006, LB 1248, § 56; Laws 2009, LB288, § 14.

Cross References

Medical Assistance Act, see section 68-901.

44-3,149 Health care coverage of children; insurer of obligor; duties.

An insurer shall, in any case in which a child has health care coverage through the insurer of the obligor:

(1) Provide such information to the obligor as may be necessary for the child to obtain benefits through such coverage;

(2) Permit the obligor or the provider, with the obligor's approval, to submit claims for covered services without the approval of the obligor; and

(3) Make payment on claims submitted in accordance with subdivision (2) of this section directly to such obligor, the provider, or the department pursuant to section 68-916.

Source: Laws 1994, LB 1224, § 77; Laws 2002, LB 1062, § 9; Laws 2006, LB 1248, § 57.

44-3,157 Mandated coverages or services; applicability.

If the laws of any other state specify that a policy issued for delivery in that state need not provide the coverages or services mandated by that state to certificate holders who are not residents or not employed in that state, and if such a policy issued for delivery in that state does not provide the coverages or services mandated by that state to certificate holders who are not residents or not employed in that state, then the coverages or services mandated by sections 44-769 to 44-7,101 shall apply to a certificate issued to certificate holders who are residents of or employed in this state.

Source: Laws 2005, LB 119, § 38; Laws 2006, LB 875, § 1.

44-3,158 Workers' compensation insurance; assigned risk system; director; powers; certain actions of employer; effect.

(1) For purposes of this section:

(a) Assigned risk employer means a Nebraska employer that is in good faith entitled to, but is unable to obtain, workers' compensation insurance through ordinary methods; and

(b) Director means the Director of Insurance.

(2)(a) The director shall enter into an agreement with one or more workers' compensation insurers to provide workers' compensation insurance to assigned risk employers. In selecting an insurer to become an assigned risk insurer, the director shall consider the cost of coverage to assigned risk employers, the loss control and claims handling services available from the workers' compensation insurer, the financial condition of the workers' compensation insurer, and any other relevant factors. An agreement entered into under this subsection may not exceed five years.

(b) If the director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high, the director may enter into an agreement in which the assigned risk insurer covers a portion of the losses incurred by the assigned risk employer. Any agreement that involves an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 shall not be considered unreasonably high for the purposes of this section. Pursuant to any such agreement, remaining losses shall be assessed against all workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act based on their workers' compensation premiums written in this state or contributions made to risk management pools. Assigned risk premiums shall be excluded from the basis for such assessments.

(c) If the assigned risk system described in subdivisions (2)(a) and (b) of this section ceases to be viable because no qualified insurer is willing to provide workers' compensation coverage at an average rate level of two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 without also requiring substantial sharing of losses with all other workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act, then the director may, after consultation with insurers authorized to issue workers' compensation insurance policies in this state, create a reasonable alternative assigned risk system involving the sharing of premiums and losses for assigned risk employers among all such workers' compensation insurers writing workers' compensation insurance in this state and such risk management pools. If established, such alternative assigned risk system shall not utilize an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511.

(3) The director may adopt and promulgate rules and regulations to carry out this section.

(4) An employer shall not be considered to be in good faith entitled to be covered by workers' compensation insurance under this section if:

(a) The employer is required to establish a safety committee pursuant to sections 48-443 to 48-445 and is not in compliance with such sections;

(b) The employer is in default on workers' compensation premiums;

(c) The employer has failed to reimburse an insurer for amounts to be repaid pursuant to workers' compensation insurance written on a policy with a deductible;

(d) The employer has failed to provide an insurer reasonable access to books and records necessary for a premium audit;

(e) The employer has defrauded or attempted to defraud an insurer; or

(f) The employer is found to have been owned or controlled by persons who owned or controlled a prior employer that is or would be ineligible for coverage pursuant to subdivisions (4)(b) through (e) of this section.

Source: Laws 1971, LB 572, § 15; Laws 1986, LB 811, § 72; Laws 1993, LB 757, § 14; Laws 2000, LB 1119, § 39; Laws 2005, LB 119, § 42; R.S.Supp.,2006, § 48-146.01; Laws 2007, LB117, § 3.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.

ARTICLE 4
INSURANCE RESERVES; POLICY PROVISIONS

Section

44-401 Domestic property and casualty insurance companies; valuation; reserves.

In ascertaining the condition of a domestic stock property or casualty insurance company, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination. In ascertaining its liabilities, there shall be charged in addition to the capital stock, all outstanding claims, and a sum equal to one hundred percent of the unearned premiums on the policies in force, after deducting credit for reinsurance authorized by sections 44-416.05 to 44-416.10, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy. In ascertaining the condition of a domestic mutual property or casualty insurance company, other than a company licensed solely to write the line of insurance specified in subdivision (4) of section 44-201, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of examination. In ascertaining its liabilities, there shall be charged all outstanding claims and a reserve in an amount equal to one hundred percent of the total unearned premium on all their policies in force. If the department finds this section to be impractical in ascertaining the condition of certain kinds of insurance companies, the department shall adopt and promulgate such rules and regulations as it deems proper, efficient, and consistent with law. Such rules and regulations shall give due regard to the statutes, rules, regulations, and established industry practices which may be used in other states or which are approved by the National Association of Insurance Commissioners.

Source: Laws 1913, c. 154, § 93, p. 437; R.S.1913, § 3230; Laws 1919, c. 190, tit. V, art. VI, § 1, p. 618; Laws 1921, c. 303, § 1, p. 960; C.S.1922, § 7829; Laws 1927, c. 141, § 1, p. 383; C.S.1929, § 44-501; R.S.1943, § 44-401; Laws 1949, c. 148, § 1, p. 374;

Laws 1951, c. 138, § 1, p. 570; Laws 1959, c. 204, § 1, p. 713; Laws 1981, LB 330, § 1; Laws 1985, LB 299, § 7; Laws 1989, LB 92, § 116; Laws 2000, LB 930, § 2; Laws 2005, LB 119, § 5.

44-402.01 Life insurance; reserves; separate accounts; establish; procedure.

Any domestic life insurance company, including, for the purposes of sections 44-402.01 to 44-402.05, all domestic fraternal benefit societies which operate on a legal reserve basis, may, after adoption of a resolution by its board of directors and certification thereof to the Director of Insurance, establish one or more separate accounts and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance and benefits incidental thereto, payable in fixed or variable amounts or both, and may, upon approval of the director, guarantee the value of the assets allocated to a separate account.

Source: Laws 1972, LB 771, § 1; Laws 1987, LB 17, § 9; Laws 2005, LB 119, § 6.

44-409 Domestic sickness and accident insurance companies; assets and liabilities.

In ascertaining the condition of a domestic sickness and accident insurance company, it shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination. In ascertaining its liabilities, there shall be charged, in addition to the capital stock and all outstanding claims, a sum equal to the total unearned premium on the policies in force, after deducting credit for reinsurance authorized by sections 44-416.05 to 44-416.10, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy.

Source: Laws 1913, c. 154, § 96, p. 439; R.S.1913, § 3233; Laws 1919, c. 190, tit. V, art. VI, § 4, p. 619; C.S.1922, § 7832; C.S.1929, § 44-504; R.S.1943, § 44-409; Laws 1949, c. 149, § 1, p. 375; Laws 1965, c. 263, § 1, p. 747; Laws 1981, LB 330, § 2; Laws 1985, LB 299, § 8; Laws 2000, LB 930, § 3; Laws 2005, LB 119, § 7.

44-416 Repealed. Laws 2005, LB 119, § 44.

44-416.01 Repealed. Laws 2005, LB 119, § 44.

44-416.03 Repealed. Laws 2005, LB 119, § 44.

44-416.04 Repealed. Laws 2005, LB 119, § 44.

44-416.05 Reinsurance agreements; purpose of sections.

The purpose of sections 44-416.05 to 44-416.10 is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The Legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the Legislature hereby provides a mandate that upon the insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with

such sections, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature declares that the matters contained in such sections are fundamental to the business of insurance in accordance with 15 U.S.C. 1011 and 1012.

Source: Laws 2005, LB 119, § 30.

44-416.06 Credit for reinsurance; when allowed.

(1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6) of this section. Except as otherwise provided in section 44-224.11, credit shall be allowed under subsection (2), (3), or (4) of this section only for cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection (4) or (5) of this section only if the applicable requirements of subsection (7) of this section have been satisfied.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this state.

(3)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. An accredited reinsurer is one that:

(i) Files with the Director of Insurance evidence of its submission to this state's jurisdiction;

(ii) Submits to this state's authority to examine its books and records;

(iii) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and

(iv) Files annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and either:

(A) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars and whose accreditation has not been denied by the director within ninety days of its submission; or

(B) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the director.

(b) Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the director after notice and hearing.

(4)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien

assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(ii) Submits to the authority of this state to examine its books and records.

(b) The requirement of subdivision (4)(a)(i) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director and bear the expense of examination.

(b)(i) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(A) The commissioner of the state where the trust is domiciled; or

(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(ii) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(iii) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(c) The following requirements apply to the following categories of assuming insurer:

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars; and

(ii)(A) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of sections 44-416.05 to 44-416.10, the trust shall consist of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account;

(B) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and

(C) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(6) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2), (3), (4), or (5) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a)(i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(b) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(8) If the assuming insurer does not meet the requirements of subsection (2), (3), or (4) of this section, the credit permitted by subsection (5) of this section

shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subdivision (5)(c) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the state insurance commissioner with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the state insurance commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the state insurance commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

Source: Laws 2005, LB 119, § 31.

44-416.07 Asset or reduction from liability for reinsurance; limitations; security required.

An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 44-416.06 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(1) Cash;

(2) Securities approved by the Director of Insurance. The director may use the list of securities furnished by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3)(a) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(b) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of

issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the director.

Source: Laws 2005, LB 119, § 32.

44-416.08 Qualified United States financial institution, defined.

(1) For purposes of subdivision (3) of section 44-416.07, qualified United States financial institution means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the Director of Insurance or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.

(2) For purposes of those provisions of sections 44-416.05 to 44-416.10 specifying those institutions that are eligible to act as a fiduciary of a trust, qualified United States financial institution means an institution that:

(a) Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(b) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

Source: Laws 2005, LB 119, § 33.

44-416.09 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out sections 44-416.05 to 44-416.10.

Source: Laws 2005, LB 119, § 34.

44-416.10 Applicability of sections.

Sections 44-416.05 to 44-416.10 apply to all cessions after September 4, 2005, under reinsurance agreements that have an inception, anniversary, or renewal date not less than six months after September 4, 2005.

Source: Laws 2005, LB 119, § 35.

44-417 Credit for reinsurance; conditions.

No credits specified in sections 44-416.05 to 44-416.10 shall be made or allowed as an admitted asset or deduction from liability to any ceding insurer for reinsurance unless the contract of reinsurance provides in substance that, in the event of the insolvency of the ceding insurer, the portion of any risk or obligation assumed by the reinsurer, when such portion is ascertained, shall be payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured without diminution because

of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except (1) when the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer or (2) when the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees. The reinsurance agreement may provide that the domiciliary liquidator, receiver, or legal successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured, within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding in which such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator, receiver, or legal successor. The expense thus incurred by the assuming insurer may be filed as a claim against the insolvent ceding insurer as part of the expense of liquidation, to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

When two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned subject to court approval, in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

Source: Laws 1951, c. 131, § 2, p. 552; Laws 1985, LB 299, § 9; Laws 1991, LB 236, § 43; Laws 2001, LB 360, § 1; Laws 2005, LB 119, § 8.

ARTICLE 5
STANDARD PROVISIONS AND FORMS

Section
44-501. Fire insurance policies; form; contents.
44-507. Foreign and domestic companies; policies; contents; reciprocity.
44-508. Liability insurance; automobiles; bankruptcy of insured; policy provisions; reciprocity.
44-514. Automobile liability policy; terms, defined.
44-522. Policies; cancellation requirements.
44-526. Health claim form; terms, defined.
44-531. Reduction or elimination of coverage; restrictive condition; notice required; right of parties to amend contract.

44-501 Fire insurance policies; form; contents.

No policy or contract of fire and lightning insurance, including a renewal thereof, shall be made, issued, used, or delivered by any insurer or by any insurance producer or representative of an insurer on property within this state other than such as shall conform as nearly as practicable to blanks, size of type, context, provisions, agreements, and conditions with the 1943 Standard Fire Insurance Policy of the State of New York, a copy of which shall be filed in the office of the Director of Insurance as standard policy for this state, and no other or different provision, agreement, condition, or clause shall in any manner be

made a part of such contract or policy or be endorsed thereon or delivered therewith except as provided in subdivisions (1) through (11) of this section.

(1) The name of the company, its location and place of business, the date of its incorporation or organization, the state or country under which such company is organized, the amount of paid-up capital stock, whether it is a stock, mutual, reciprocal, or assessment company, the names of its officers, the number and date of the policy, and appropriate company emblems may be printed on policies issued on property in this state. Any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.

In lieu of the facsimile signatures of the president and secretary of the insurer on such policy, there may appear the signature or signatures of such persons as are duly authorized by the insurer to execute the contract. No such policy shall be void if the facsimile signature or signatures of any officer of the company shall not correspond with the actual persons who are such officers at the inception of the contract if such policy is countersigned by a duly authorized agent of the insurer.

(2) Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of supplemental contracts, contracts, or endorsements, whereby the interest in the property described in such policy shall be insured against one or more of the perils which insurer is empowered to assume, may be used in connection with the standard policy. Such forms of contracts, supplemental contracts, or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and rearranged for convenience in the preparation of individual contracts and to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsements attached or printed thereon and such other data as may be included for duplication on daily reports for office records.

(3) A company, corporation, or association organized or incorporated under and in pursuance of the laws of this state or elsewhere, if entitled to do business in this state, may with the approval of the Director of Insurance, if the same is not already included in the standard form as filed in the office of the Department of Insurance, print on its policies any provision which it is required by law to insert therein if the provision is not in conflict with the laws of this state or the United States or with the provisions of the standard form provided for in this section, but such provision shall be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: Provisions required by law to be stated in this policy, and be a part of the policy.

(4) There may be endorsed on the outside of any policy provided for in this section for the name, with the words insurance producer and place of business, of any insurance producer, either by writing, printing, stamping, or otherwise. There may also be added, with the approval of the Director of Insurance, a

statement of the group of companies with which the company is financially affiliated and the usual company medallion.

(5) When two or more companies, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the headline of each policy the fact of the severalty of the contract and also the proportion of premiums to be paid to each company and the proportion of liability which each company agrees to assume. In the printed conditions of such policy, the necessary change may be made from the singular to plural number when reference is made to the companies issuing such policy.

(6) This section shall not apply to motor vehicle, inland marine, or ocean marine insurance, reinsurance contracts between insurance companies, or insurance that does not cover risks of a personal nature. An insurer may file with the director, pursuant to the Property and Casualty Insurance Rate and Form Act, any form of policy which includes coverage against the peril of fire and substantial coverage against other perils without complying with the provisions of this section if such policy with respect to the peril of fire includes provisions which are the substantial equivalent of the minimum provisions of the standard policy provided for in this section and if the policy is complete as to all its terms without reference to any other document.

(7) If the policy is made by a mutual assessment or other company having special regulations lawfully applicable to its organization, membership, policies, or contracts of insurance, such regulations shall apply to and form a part of the policy as the same may be written or printed upon or attached or appended thereto.

(8) Assessment associations may issue policies with such modifications as shall be filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act.

(9) Any other coverage which a company is authorized to write under the laws of this state may be written in combination with a fire insurance policy.

(10) The policy shall provide that claims involving total loss situations shall be paid in accordance with section 44-501.02.

(11) Notwithstanding any other provision of this section, an insurer may file, pursuant to the Property and Casualty Insurance Rate and Form Act, any form of policy with variations in terms and conditions from the standard policy provided for in this section.

Source: Laws 1913, c. 154, § 100, p. 444; R.S.1913, § 3237; Laws 1919, c. 190, tit. V, art. VII, § 1, p. 625; C.S.1922, § 7836; C.S.1929, § 44-601; R.S.1943, § 44-501; Laws 1951, c. 139, § 1, p. 572; Laws 1959, c. 207, § 1, p. 724; Laws 1973, LB 51, § 1; Laws 1989, LB 92, § 119; Laws 2003, LB 216, § 5; Laws 2007, LB117, § 4.

Cross References

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-507 Foreign and domestic companies; policies; contents; reciprocity.

The policies of any insurance company not organized under the laws of this state may, if filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act, contain any provisions which the law of the state, territory, district, or country under which the company is organized

prescribes shall be in such policies when issued in this state, and the policies of any insurance company organized under the laws of this state may, when issued or delivered in any other state, territory, district, or country, contain any provision required by the laws of the state, territory, district, or country in which such policies are issued, the provisions of sections 44-501 to 44-510 to the contrary notwithstanding.

Source: Laws 1913, c. 154, § 106, p. 453; R.S.1913, § 3243; Laws 1919, c. 190, tit. V, art. VII, § 7, p. 634; C.S.1922, § 7842; Laws 1925, c. 124, § 4, p. 330; C.S.1929, § 44-607; R.S.1943, § 44-507; Laws 2007, LB117, § 5.

Cross References

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-508 Liability insurance; automobiles; bankruptcy of insured; policy provisions; reciprocity.

The policies or contracts of insurance covering legal liability for injury to a person or persons caused by the ownership, operation, use, or maintenance of an automobile issued by any domestic or foreign company shall, if filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act, contain a provision that the insolvency or bankruptcy of the assured shall not release the company from the payment of damages for injury sustained or loss occasioned during the life of the policy, and, in case of such insolvency or bankruptcy, an action may be maintained within the terms and limits of the policy by the injured person or his or her heirs against the insurer.

Source: Laws 1925, c. 124, § 4, p. 330; C.S.1929, § 44-607; R.S.1943, § 44-508; Laws 2007, LB117, § 6.

Cross References

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-514 Automobile liability policy; terms, defined.

For purposes of sections 44-514 to 44-521, unless the context otherwise requires:

(1) Policy shall mean an automobile liability policy providing all or part of the coverage defined in subdivision (2) of this section, delivered or issued for delivery in this state, insuring a natural person as named insured or one or more related individuals resident of the same household, and under which the insured vehicles designated in the policy are of the following types only: (a) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers nor rented to others; or (b) any other four-wheel motor vehicle of the pickup, panel, or delivery type which is not used in the occupation, profession, or business of the insured, except that sections 44-514 to 44-521 shall not apply (i) to any policy issued under an automobile assigned risk plan; (ii) to any policy subject to section 44-523; (iii) to any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards; or (iv) to any policy of insurance issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle

on the premises of such insured or on the way immediately adjoining such premises;

(2) Automobile liability coverage shall include only coverage of bodily injury and property damage liability, medical payments, uninsured motorist coverage, and underinsured motorist coverage;

(3) Renewal or to renew shall mean the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, except that (a) any policy with a policy period or term of less than six months shall be considered as if written for a policy period or term of six months and (b) any policy written for a term longer than one year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one year, and such policy may be terminated at the expiration of any annual period upon giving twenty days' notice of cancellation prior to such anniversary date, and such cancellation shall not be subject to any other provisions of sections 44-514 to 44-521; and

(4) Nonpayment of premium shall mean failure of the named insured to discharge when due any of his or her obligations in connection with the payment of any premium on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

Source: Laws 1972, LB 1396, § 1; Laws 1989, LB 92, § 124; Laws 2007, LB115, § 1.

44-522 Policies; cancellation requirements.

(1) No insurer may file an insurance policy with the department, as required by the Property and Casualty Insurance Rate and Form Act, which insures against loss or damage to property or against legal liability from any cause unless such policy contains appropriate provisions for cancellation thereof by either the insurer or the insured and for nonrenewal thereof by the insurer.

(2) On any policy or binder of property, marine, or liability insurance, as specified in section 44-201, the insurer shall give the insured sixty days' written notice prior to cancellation or nonrenewal of such policy or binder, except that the insurer may cancel upon ten days' written notice to the insured in the event of nonpayment of premium or if such policy or binder has a specified term of sixty days or less unless the policy or binder has previously been renewed. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium. The provisions of this subsection and subsection (4) of this section shall not apply to nonrenewal of a policy or binder which has a specified term of sixty days or less unless the policy or binder has previously been renewed. Such notice shall state the reason for cancellation or nonrenewal.

(3) Notwithstanding subsection (2) of this section, no policy of property, marine, or liability insurance, as specified in section 44-201, which has been in effect for more than sixty days shall be canceled by the insurer except for one of the following reasons:

(a) Nonpayment of premium;

(b) The policy was obtained through a material misrepresentation;

(c) Any insured has submitted a fraudulent claim;

(d) Any insured has violated any of the terms and conditions of the policy;

(e) The risk originally accepted has substantially increased;

(f) Certification to the Director of Insurance of loss of reinsurance by the insurer which provided coverage to the insurer for all or a substantial part of the underlying risk insured; or

(g) The determination by the director that the continuation of the policy could place the insurer in violation of the insurance laws of this state.

(4) Notice of cancellation or nonrenewal shall be sent by registered, certified, or first-class mail to the insured's last mailing address known to the insurer. If sent by first-class mail, a United States Postal Service certificate of mailing shall be sufficient proof of receipt of notice on the third calendar day after the date of the certificate.

(5) For purposes of this section:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of or a refusal to renew a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation or a refusal to renew a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(6) The requirements of subsections (2), (3), and (4) of this section shall not apply to automobile insurance coverage, insurance coverage issued under the Nebraska Workers' Compensation Act, insurance coverage on growing crops, or insurance coverage which is for a specified season or event and which is not subject to renewal or replacement.

(7) All policy forms issued for delivery in Nebraska shall conform to this section.

Source: Laws 1913, c. 154, § 72, p. 424; R.S.1913, § 3208; Laws 1919, c. 190, tit. V, art. IV, § 42, p. 604; C.S.1922, § 7807; C.S.1929, § 44-342; R.S.1943, § 44-379; Laws 1955, c. 176, § 1, p. 505; Laws 1986, LB 1184, § 1; R.S.1943, (1988), § 44-379; Laws 1989, LB 92, § 126; Laws 1991, LB 233, § 45; Laws 1999, LB 326, § 3; Laws 2000, LB 1119, § 37; Laws 2001, LB 360, § 5; Laws 2007, LB117, § 7.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.
Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-526 Health claim form; terms, defined.

For purposes of the Standardized Health Claim Form Act:

(1) Ambulatory surgical facility shall mean a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization and which is licensed as a health clinic as defined by section 71-416 but shall not include the offices of private physicians or dentists whether for individual or group practice;

(2) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease or injury or congenital or degenerative condition;

(3) Health care practitioner shall mean an individual or group of individuals in the form of a partnership, limited liability company, or corporation licensed, certified, or otherwise authorized or permitted by law to administer health care in the course of professional practice and shall include the health care professions and occupations which are regulated in the Uniform Credentialing Act;

(4) Hospital shall mean a hospital as defined by section 71-419 except state hospitals administered by the Department of Health and Human Services;

(5) Institutional care providers shall mean all facilities licensed or otherwise authorized or permitted by law to administer health care in the ordinary course of business and shall include all health care facilities defined in the Health Care Facility Licensure Act;

(6) Issuer shall mean an insurance company, fraternal benefit society, health maintenance organization, third-party administrator, or other entity reimbursing the costs of health care expenses;

(7) Medicaid shall mean the medical assistance program pursuant to the Medical Assistance Act;

(8) Medicare shall mean Title XVIII of the federal Social Security Act, 42 U.S.C. 1395 et seq., as amended; and

(9) Uniform claim form shall mean the claim forms and electronic transfer procedures developed pursuant to section 44-527.

Source: Laws 1994, LB 1222, § 54; Laws 1996, LB 1044, § 235; Laws 2000, LB 819, § 68; Laws 2006, LB 1248, § 58; Laws 2007, LB463, § 1134.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Medical Assistance Act, see section 68-901.
Uniform Credentialing Act, see section 38-101.

44-531 Reduction or elimination of coverage; restrictive condition; notice required; right of parties to amend contract.

(1) If an insurer reduces or eliminates any coverage in or introduces a more restrictive condition as part of a policy in force delivered or issued for delivery in this state and subject to sections 44-514 to 44-521 or section 44-522 or 44-523 prior to renewal of the policy and other than at the request of the named insured or as required by law, the insurer shall send to the named insured a notice explaining clearly what coverage has been reduced or eliminated or what condition has been restricted. The notice may be in a printed or electronic form if the named insured requested the electronic form and there was an agreement to that effect with the insurer prior to such request. If the named insured does not receive the notice, the reduction or elimination of coverage or restrictive condition shall not become part of the policy. It shall be a rebuttable presumption that all insureds received the notice if it was sent by email or first-class mail to the named insured's last-known email address or mailing address contained in the policy.

(2) Notice of any reduction or elimination of coverage or restrictive condition as part of a policy in force delivered or issued for delivery in this state and

subject to sections 44-514 to 44-521 or section 44-522 or 44-523 and other than at the request of the named insured or as required by law shall be sent to each agency that holds an agency contract with the insurer prior to the introduction into the marketplace of a policy containing the reduction or elimination of coverage or restrictive condition.

(3) Nothing in this section shall restrict the right of the parties to an insurance contract to amend the contract, during the policy term but not during the renewal process, pursuant to an endorsement attached to the policy if requested by a named insured under the policy. An endorsement attached to a policy pursuant to this subsection requires no further notice beyond such endorsement.

Source: Laws 2008, LB1045, § 1.

ARTICLE 7

GENERAL PROVISIONS COVERING LIFE, SICKNESS, AND ACCIDENT INSURANCE

Section

44-710.01 Sickness and accident insurance; standard policy provisions; requirements; enumeration.

No policy of sickness and accident insurance shall be delivered or issued for delivery to any person in this state unless (1) the entire money and other considerations therefor are expressed therein, (2) the time at which the insurance takes effect and terminates is expressed therein, (3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children, any children enrolled on a full-time basis in any college, university, or trade school, or any children under a specified age which shall not exceed thirty years and any other person dependent upon the policyholder; any individual policy hereinafter delivered or issued for delivery in this state which provides that coverage of a dependent child shall terminate upon the attainment of the limiting age for dependent children specified in the policy shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of such policy and while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retarda-

tion or physical handicap and (b) chiefly dependent upon the policyholder for support and maintenance, if proof of such incapacity and dependency is furnished to the insurer by the policyholder within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age; such insurer may charge an additional premium for and with respect to any such continuation of coverage beyond the limiting age of the policy with respect to such child, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child, (4) it contains a title on the face of the policy correctly describing the policy, (5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections 44-710.03 and 44-710.04, are printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as EXCEPTIONS, or EXCEPTIONS AND REDUCTIONS; if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies, (6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof, (7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Director of Insurance, and (8) on or after January 1, 1999, any restrictive rider contains a notice of the existence of the Comprehensive Health Insurance Pool if the policy provides health insurance as defined in section 44-4209.

Source: Laws 1957, c. 188, § 2, p. 643; Laws 1969, c. 374, § 1, p. 1333; Laws 1989, LB 92, § 131; Laws 1998, LB 1063, § 1; Laws 2009, LB551, § 1.

44-761 Group sickness and accident insurance; required provisions.

Each group policy of sickness and accident insurance shall contain in substance the following provisions:

(1) A provision that the policy, the application of the policyholder if such application or copy thereof is attached to such policy, and the individual applications, if any, submitted in connection with such policy by the employees or members, shall constitute the entire contract between the parties, that all statements, in the absence of fraud, made by any applicant or applicants shall be deemed representations and not warranties, and that no such statement shall avoid the insurance or reduce benefits thereunder unless contained in a written application of which a copy is attached to the policy;

(2) A provision that the insurer will furnish to the policyholder, for delivery to each employee or member of the insured group, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit;

(3) A provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy; and

(4) A provision that the insurance coverage of the employee or member may include, originally or by subsequent amendment, upon the application of the employee or member, any two or more eligible members of his or her family, including husband, wife, dependent children, any children enrolled on a full-time basis in any college, university, or trade school, or any children under a specified age which shall not exceed thirty years, and any other person dependent upon the policyholder. Any policy which provides that coverage of an unmarried dependent child shall terminate upon the attainment of the limiting age for unmarried dependent children specified in the policy shall also provide that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of the insurance coverage of the employee or member under such policy and while such child is and continues to be (a) incapable of self-sustaining employment by reason of mental or physical handicap and (b) chiefly dependent upon the policyholder for support and maintenance, if proof of such incapacity and dependency is furnished to the insurer by the policyholder within thirty-one days of such child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following such child's attainment of the limiting age. The insurer may charge an additional premium for and with respect to any such continuation of coverage beyond the limiting age of the policy, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child. The provisions of this subdivision shall be contained in all new policies of group sickness and accident insurance delivered or issued for delivery to any person in this state. No group policy of sickness and accident insurance shall contain any provisions which are in conflict with sections 44-3,144 to 44-3,150.

Source: Laws 1947, c. 164, § 16(2), p. 469; Laws 1976, LB 649, § 1; Laws 1989, LB 92, § 153; Laws 1994, LB 1224, § 79; Laws 2009, LB551, § 2.

44-771 Hospital, defined.

Hospital shall mean an institution licensed as a hospital by the Department of Health and Human Services and defined in section 71-419.

Source: Laws 1980, LB 646, § 3; Laws 1996, LB 1044, § 236; Laws 2000, LB 819, § 69; Laws 2007, LB296, § 173.

44-772 Substance abuse treatment center, defined.

Substance abuse treatment center shall mean an institution licensed as a substance abuse treatment center by the Department of Health and Human Services and defined in section 71-430, which provides a program for the inpatient or outpatient treatment of alcoholism pursuant to a written treatment plan approved and monitored by a physician and which is affiliated with a hospital under a contractual agreement with an established system for patient referral.

Source: Laws 1980, LB 646, § 4; Laws 1985, LB 209, § 1; Laws 1985, LB 253, § 1; Laws 1996, LB 1044, § 237; Laws 1996, LB 1155, § 17; Laws 2000, LB 819, § 70; Laws 2007, LB296, § 174.

44-773 Outpatient program, defined.

Outpatient program shall refer to a program which is licensed or certified by the Department of Health and Human Services or the Division of Behavioral Health of the Department of Health and Human Services to provide specified services to persons suffering from the disease of alcoholism.

Source: Laws 1980, LB 646, § 5; Laws 1995, LB 275, § 3; Laws 1996, LB 1044, § 238; Laws 1996, LB 1155, § 18; Laws 2004, LB 1083, § 96; Laws 2007, LB296, § 175.

44-774 Certified, defined.

Certified shall mean approved by the Division of Behavioral Health of the Department of Health and Human Services to render specific types or levels of care to the person suffering from the disease of alcoholism.

Source: Laws 1980, LB 646, § 6; Laws 1995, LB 275, § 4; Laws 1996, LB 1044, § 239; Laws 2004, LB 1083, § 97; Laws 2007, LB296, § 176.

44-782 Health insurance provider; coverage of mental or nervous disorders; requirements.

No insurance company, health maintenance organization, or other health insurance provider shall deny payment for treatment of mental or nervous disorders under a policy, contract, certificate, or other evidence of coverage issued or delivered in Nebraska on the basis that the hospital or state institution licensed as a hospital by the Department of Health and Human Services and defined in section 71-419 providing such treatment is publicly funded and charges are reduced or no fee is charged depending on the patient's ability to pay.

Source: Laws 1985, LB 487, § 1; Laws 1989, LB 92, § 162; Laws 1996, LB 1044, § 240; Laws 2000, LB 819, § 71; Laws 2007, LB296, § 177.

44-784 Coverage for childhood immunizations; requirements.

Notwithstanding section 44-3,131, any expense-incurred group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed after January 1, 1995, or any expense-incurred individual sickness and accident insurance policy, certificate, or subscriber contract delivered or issued for delivery after such date that provides coverage for a dependent child under six years of age shall provide coverage for childhood immunizations. Benefits for childhood immunizations shall be exempt from any deductible provision contained in the applicable policy. Copayment, coinsurance, and dollar-limit provisions applicable to other medical services may be applied to the childhood immunization benefits. This section shall not apply to any individual or group policies that provide coverage for a specified disease, accident-only coverage, hospital indemnity coverage, medicare supplement coverage, long-term care coverage, or other limited-benefit coverage.

For purposes of this section, childhood immunizations shall mean the complete set of vaccinations for children from birth to six years of age for

immunization against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, and haemophilus influenzae type B.

Source: Laws 1994, LB 1222, § 46; Laws 2007, LB63, § 1.

44-789 Coverage for bone or joint treatment; requirements.

Notwithstanding section 44-3,131, no group policy of accident or health insurance, health services plan, or health maintenance organization subscription shall be offered for sale in this state on or after January 1, 2009, unless such policy, plan, subscription, or contract which specifically provides coverage for surgical and nonsurgical treatment involving a bone or joint of the skeletal structure includes the option to provide coverage, for an additional premium and subject to the insurer's standard of insurability, for the reasonable and necessary medical treatment of temporomandibular joint disorder and craniomandibular disorder. The purchaser of the group policy of accident or health insurance, health services plan, or health maintenance organization subscription shall accept or reject the coverage in writing on the application or an amendment thereto for the master group policy of accident or health insurance, health services plan, or health maintenance organization subscription. Benefits may be subject to the same preexisting conditions, limitations, deductibles, copayments, and coinsurance that generally apply to any other sickness. The maximum lifetime benefits for temporomandibular joint disorder and craniomandibular disorder treatment shall be no less than two thousand five hundred dollars. Nothing in this section shall prevent an insurer from including such coverage for temporomandibular joint disorder and craniomandibular disorder as part of a policy's basic coverage instead of offering optional coverage.

Source: Laws 1998, LB 1162, § 82; Laws 2008, LB855, § 5.

44-792 Mental health conditions; terms, defined.

For purposes of sections 44-791 to 44-795:

(1) Health insurance plan means (a) any group sickness and accident insurance policy, group health maintenance organization contract, or group subscriber contract delivered, issued for delivery, or renewed in this state and (b) any self-funded employee benefit plan to the extent not preempted by federal law. Health insurance plan includes any group policy, group contract, or group plan offered or administered by the state or its political subdivisions. Health insurance plan does not include group policies providing coverage for a specified disease, accident-only coverage, hospital indemnity coverage, disability income coverage, medicare supplement coverage, long-term care coverage, or other limited-benefit coverage. Health insurance plan does not include any policy, contract, or plan covering an employer group that covers fewer than fifteen employees;

(2) Mental health condition means any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in the Mental Disorders Section of the International Classification of Disease;

(3) Mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (c) a practicing mental health

professional licensed or certified in this state as provided in the Mental Health Practice Act;

(4) Rate, term, or condition means lifetime limits, annual payment limits, and inpatient or outpatient service limits. Rate, term, or condition does not include any deductibles, copayments, or coinsurance; and

(5)(a) Serious mental illness means, prior to January 1, 2002, (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder; and

(b) Serious mental illness means, on and after January 1, 2002, any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes, but is not limited to (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder.

Source: Laws 1999, LB 355, § 2; Laws 2007, LB463, § 1135.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.

44-793 Mental health conditions; coverage; requirements.

(1) On or after January 1, 2000, notwithstanding section 44-3,131, any health insurance plan delivered, issued, or renewed in this state (a) if coverage is provided for treatment of mental health conditions other than alcohol or substance abuse, (i) shall not establish any rate, term, or condition that places a greater financial burden on an insured for access to treatment for a serious mental illness than for access to treatment for a physical health condition and (ii) if an out-of-pocket limit is established for physical health conditions, shall apply such out-of-pocket limit as a single comprehensive out-of-pocket limit for both physical health conditions and mental health conditions, or (b) if no coverage is to be provided for treatment of mental health conditions, shall provide clear and prominent notice of such noncoverage in the plan.

(2) If a health insurance plan provides coverage for serious mental illness, the health insurance plan shall cover health care rendered for treatment of serious mental illness (a) by a mental health professional, (b) by a person authorized by the rules and regulations of the Department of Health and Human Services to provide treatment for mental illness, (c) in a mental health center as defined in section 71-423, or (d) in any other health care facility licensed under the Health Care Facility Licensure Act that provides a program for the treatment of a mental health condition pursuant to a written plan. The issuer of a health insurance plan may require a health care provider under this subsection to enter into a contract as a condition of providing benefits.

(3) The Director of Insurance may disapprove any plan that the director determines to be inconsistent with the purposes of this section.

Source: Laws 1999, LB 355, § 3; Laws 2000, LB 819, § 72; Laws 2007, LB296, § 178.

Cross References

Health Care Facility Licensure Act, see section 71-401.

44-797 Coverage for breast reconstruction; requirements; exceptions.

(1)(a) Any individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract that provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for all stages of reconstruction of the breast on which the mastectomy has been performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

(b) Each individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract shall provide notice to each policyholder and certificate holder of the coverage required by this section. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer. For group policies, such notice shall be sent to the policyholder or certificate holder by the plan or to the participant or beneficiary by the issuer. For individual policies, such notice shall be sent to the policyholder by the issuer no later than December 31, 2006.

(2) No individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract may deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section, or penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide monetary or other incentives to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section. Nothing in this section shall be construed to prohibit normal underwriting.

(3) Nothing in this section shall be construed to prevent an individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract offering health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(4) The provisions of this section shall not apply to any individual or group policy or certificate which provides:

(a) Coverage only for accident or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for onsite medical clinics;

(h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

(i) Limited-scope dental or vision benefits;

(j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;

(k) Such other similar, limited benefits as are specified in federal regulations;

(l) Coverage only for a specified disease or illness;

(m) Hospital indemnity or other fixed indemnity insurance;

(n) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act, as such section existed on January 1, 2005;

(o) Coverage supplemental to the coverage provided under 10 U.S.C. chapter 55, as such chapter existed on January 1, 2005; and

(p) Similar supplemental coverage provided to coverage under a group health plan.

Source: Laws 2000, LB 930, § 4; Laws 2005, LB 119, § 9.

44-7,102 Coverage for screening for colorectal cancer.

(1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for short-term major medical policies of six months or less duration and policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law shall include screening coverage for a colorectal cancer examination and laboratory tests for cancer for any nonsymptomatic person fifty years of age and older covered under such policy, certificate, contract, or plan. Such screening coverage shall include a maximum of one screening fecal occult blood test annually and a flexible sigmoidoscopy every five years, a colonoscopy every ten years, or a barium enema every five to ten years, or any combination, or the most reliable, medically recognized screening test available. The screenings selected shall be as deemed appropriate by a health care provider and the patient.

(2) This section does not prevent application of deductible or copayment provisions contained in the policy, certificate, contract, or employee benefit plan or require that such coverage be extended to any other procedures.

Source: Laws 2007, LB247, § 86.

44-7,103 Continuing coverage for children to age thirty; requirements.

(1) For purposes of this section, health benefit plan means any expense-incurred individual or group sickness and accident insurance policy, health maintenance organization contract, subscriber contract, or self-funded employee benefit plan to the extent not preempted by federal law, except for any policy or contract that provides coverage only for excepted benefits as defined in the federal Health Insurance Portability and Accountability Act of 1996, 29 U.S.C.

1191b, and regulations adopted pursuant to the act, as such act and regulations existed on January 1, 2009, or any policy or contract that provides coverage for a specified disease or other limited-benefit coverage.

(2) Notwithstanding section 44-3,131, any health benefit plan that provides coverage for children shall provide for continuing coverage for such children as follows:

(a) If coverage under the health benefit plan would otherwise terminate because a covered child ceases to be a dependent, ceases to be a full-time student, or attains an age which exceeds the specified age at which coverage ceases pursuant to the plan, the health benefit plan shall provide the option to the insured to continue coverage for such child through the end of the month in which the child (i) marries, (ii) ceases to be a resident of the state, unless the child is under nineteen years of age or is enrolled on a full-time basis in any college, university, or trade school, (iii) receives coverage under another health benefit plan or a self-funded employee benefit plan that is not included in the definition of a health benefit plan under subsection (1) of this section but provides similar coverage, or (iv) attains thirty years of age; and

(b) The health benefit plan may require:

(i) A written election from the insured; and

(ii) An additional premium for the child. Such premium shall not vary based upon the health status of the child and shall not exceed the amount the health benefit plan would receive for an identical individual for a single adult insured. No employer shall be required to contribute to any additional premium under this subdivision.

Source: Laws 2009, LB551, § 3.

ARTICLE 10
FRATERNAL INSURANCE

Section

44-1089 Benefits; exempt from claims of creditors; exceptions.

(1) No noninsurance benefit, charity, relief, or aid to be paid, provided, or rendered by any society shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

(2)(a) Except as provided in subdivision (2)(b) of this section, all proceeds, cash values, and benefits accruing under any annuity contract, under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured, or under any accident or health insurance policy shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the insured and of the beneficiary if related to the insured by blood or marriage, unless a written assignment to the contrary has been obtained by the claimant.

(b) Subdivision (2)(a) of this section shall not apply to:

(i) An individual's aggregate interests greater than one hundred thousand dollars in all loan values or cash values of all matured or unmatured life

insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual; and

(ii) An individual's interest in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual, to the extent that the loan values or cash values of any matured or unmatured life insurance contract or the proceeds, cash values, or benefits accruing under any annuity contract were established or increased through contributions, premiums, or any other payments made within three years prior to bankruptcy or within three years prior to entry against the individual of a money judgment which thereafter becomes final.

(c) A fraternal benefit society shall not be liable or responsible to any person to determine or ascertain the existence or identity of any such creditors prior to payment of any such loan values, cash values, proceeds, or benefits.

(3) Notwithstanding subsection (2) of this section, proceeds, cash values, and benefits accruing under any annuity contract or under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured shall not be exempt from attachment, garnishment, or other legal or equitable process by a judgment creditor of the beneficiary if the judgment against the beneficiary was based on, arose from, or was related to an act, transaction, or course of conduct for which the beneficiary has been convicted by any court of a crime punishable only by life imprisonment or death. No fraternal benefit society shall be liable or responsible to any person to determine or ascertain the existence or identity of any such judgment creditor prior to payment of any such proceeds, cash values, or benefits. This subsection shall apply to any judgment rendered on or after January 1, 1995, irrespective of when the criminal conviction is or was rendered and irrespective of whether proceedings for attachment, garnishment, or other legal or equitable process were pending on March 14, 1997.

Source: Laws 1985, LB 508, § 18; Laws 1987, LB 335, § 2; Laws 1997, LB 47, § 2; Laws 2005, LB 465, § 4.

ARTICLE 11

VIATICAL SETTLEMENTS ACT

Section

44-1101 Act, how cited.

Sections 44-1101 to 44-1117 shall be known and may be cited as the Viatical Settlements Act.

Source: Laws 2001, LB 52, § 27; Laws 2008, LB853, § 1.

44-1102 Terms, defined.

For purposes of the Viatical Settlements Act:

(1) Advertising means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public, in this state, for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract;

(2) Business of viatical settlements means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating or in any manner acquiring an interest in a life insurance policy by means of a viatical settlement contract;

(3) Chronically ill means (a) being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence; (b) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or (c) having a level of disability similar to that described in subdivision (3)(a) of this section as determined by the Department of Health and Human Services;

(4) Department means the Department of Insurance;

(5) Director means the Director of Insurance;

(6) Financing entity means an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy or certificate from a viatical settlement provider, a credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract (a) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies and (b) who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. Financing entity does not include a nonaccredited investor or viatical settlement purchaser;

(7) Fraudulent viatical settlement act means:

(a) An act or omission committed by any person who, knowingly and with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, commits, or permits his or her employees or agents to commit, any of the following acts:

(i) Presenting, causing to be presented, or preparing with the knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance broker, insurance agent, or any other person, false material informa-

tion, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(A) An application for the issuance of a viatical settlement contract or insurance policy;

(B) The underwriting of a viatical settlement contract or insurance policy;

(C) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;

(D) Premiums paid on an insurance policy;

(E) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;

(F) The reinstatement or conversion of an insurance policy;

(G) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;

(H) The issuance of written evidence of a viatical settlement contract or insurance; or

(I) A financing transaction; or

(ii) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies;

(b) In the furtherance of a fraud or to prevent the detection of a fraud:

(i) Removing, concealing, altering, destroying, or sequestering from the director the assets or records of a licensee or other person engaged in the business of viatical settlements;

(ii) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;

(iii) Transacting the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or

(iv) Filing with the director or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the director;

(c) Presenting, causing to be presented, or preparing with the knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance policy, knowing the policy was fraudulently obtained by the insured, owner, or any agent thereof;

(d) Embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance;

(e) Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, if the person or persons intended to defraud the policy's issuer, the viatical settlement provider, or the viator.

Recklessly means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks and such disregard involves a gross deviation from acceptable standards of conduct;

(f) Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to the Viatical Settlements Act for the express purposes of evading or avoiding the provisions of the act; or

(g) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit the acts or omissions specified in this subdivision;

(8) Life insurance producer means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to subdivision (1)(a) of section 44-4054;

(9) Person means a natural person or a legal entity, including an individual, a partnership, a limited liability company, an association, a trust, or a corporation;

(10) Policy means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state;

(11) Related provider trust means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the director as if those records and files were maintained directly by the licensed viatical settlement provider;

(12) Special purpose entity means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets:

(a) For a financing entity or licensed viatical settlement provider; or

(b)(i) In connection with a transaction in which the securities in the special purpose entity are acquired by the viator or by qualified institutional buyers as defined in Rule 144A of the federal Securities Act of 1933, as such act existed on January 1, 2008; or

(ii) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets;

(13) Terminally ill means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less;

(14) Viatical settlement broker means a person, including a life insurance producer as provided in subdivision (1)(b) of section 44-1103, who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to

represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. Viatical settlement broker does not include an attorney, a certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser;

(15)(a) Viatical settlement contract means a written agreement between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership or any portion of the insurance policy or certificate of insurance.

(b) Viatical settlement contract includes a premium finance loan made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the policy if:

(i) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or

(ii) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(c) Viatical settlement contract does not include:

(i) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(ii) A loan, the proceeds of which are used solely to pay:

(A) Premiums for the policy; or

(B) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter-of-credit issuers;

(iii) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, if the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under the Viatical Settlements Act;

(iv) A premium finance loan not described in subdivision (15)(b) of this section;

(v) An agreement where all the parties (A) are closely related to the insured by blood or law, (B) have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or (C) are trusts established primarily for the benefit of such parties;

(vi) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(vii) A bona fide business succession planning arrangement:

(A) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(B) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(C) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(viii) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(ix) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the director based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated under the act;

(16)(a) Viatical settlement provider means a person, other than a viator, that enters into or effectuates a viatical settlement contract.

(b) Viatical settlement provider does not include:

(i) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

(ii) A premium finance company making premium finance loans that takes an assignment of a life insurance policy solely as collateral for a loan;

(iii) The issuer of the life insurance policy;

(iv) An authorized or eligible insurer that provides stop-loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

(v) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(vi) A financing entity;

(vii) A special purpose entity;

(viii) A related provider trust;

(ix) A viatical settlement purchaser; or

(x) Any other person that the director exempts from the definition of viatical settlement provider;

(17)(a) Viatical settlement purchaser means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

(b) Viatical settlement purchaser does not include:

(i) A licensee under the Viatical Settlements Act;

(ii) An accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A of the federal Securities Act of 1933, as the act existed on January 1, 2008;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust;

(18) Viaticated policy means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract; and

(19)(a) Viator means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and who enters or seeks to enter into a viatical settlement contract. For purposes of the Viatical Settlements Act, a viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except as specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one of the viators agreed upon in writing by all the viators.

(b) Viator does not include:

(i) A licensee under the act;

(ii) A qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, as the act existed on January 1, 2008;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust.

Source: Laws 2001, LB 52, § 28; Laws 2007, LB296, § 179; Laws 2008, LB853, § 2.

44-1103 License requirements; fee.

(1)(a) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the director or the chief insurance regulatory official of the state of residence of the viator.

(b)(i) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.

(ii) No later than thirty days after the first day of operating as a viatical settlement broker, the life insurance producer shall notify the director that he or she is acting as a viatical settlement broker on a form prescribed by the director and shall pay any applicable fee to be determined by the director. Notification shall include an acknowledgment by the life insurance producer that he or she will operate as a viatical settlement broker in accordance with the Viatical Settlements Act.

(iii) The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

(c) A licensed attorney, a certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

(2) Application for a viatical settlement provider or viatical settlement broker license shall be made to the director by the applicant on a form prescribed by the director. The viatical settlement broker application shall be accompanied by a fee established by the director of not to exceed forty dollars. The viatical settlement provider application shall be accompanied by a fee established by the director of not to exceed one thousand five hundred dollars.

(3) All viatical settlement broker licenses shall expire on the last day of the month of the licensed person's birthday in the first year after issuance in which his or her age is divisible by two and may be renewed upon payment of a fee established by the director not to exceed forty dollars. All viatical settlement provider licenses shall expire on the last day of April in each year and may be renewed upon payment of a renewal fee established by the director not to exceed one hundred dollars. Failure to pay the fee by the renewal date results in expiration of the license.

(4) The applicant shall provide information on forms required by the director. The director shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees, and the director may, in the exercise of the director's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any stockholder, partner, officer, member, or employee thereof who may materially influence the applicant's conduct meets the standards of the Viatical Settlements Act.

(5) A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers and viatical settlement brokers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

(6) Upon the filing of an application and the payment of the license fee, the director shall make an investigation of each applicant and issue a license if the director finds that the applicant:

(a) If a viatical settlement provider, provides a detailed plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the capacity for which application for a license is made;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which application for a license is made;

(d) If a viatical settlement broker or viatical settlement provider, has demonstrated evidence of financial responsibility in a format prescribed by the director through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit, or securities or any combination thereof in the amount of two hundred fifty thousand dollars;

(i) The director may ask for evidence of financial responsibility at any time the director deems necessary;

(ii) Any surety bond issued pursuant to subdivision (d) of this subsection shall be in the favor of this state and shall specifically authorize recovery by the director on behalf of any person in this state who has sustained damages as a result of an erroneous act, failure to act, conviction of fraud, or conviction of unfair practices of the viatical settlement provider or viatical settlement broker; and

(iii) Notwithstanding any provision of this section to the contrary, the director shall accept as evidence of financial responsibility proof that financial instruments in accordance with the requirements of subdivision (d) of this subsection have been filed with a state where the applicant is licensed as a viatical settlement provider or viatical settlement broker;

(e) If a legal entity, provides a certificate of good standing from the state of its domicile; and

(f) If a viatical settlement provider or viatical settlement broker, provides an antifraud plan that meets the requirements of subsection (7) of section 44-1112.

(7) A licensee shall provide to the director new or revised information about officers, ten-percent or more stockholders, partners, directors, members, or designated employees within thirty days after the change.

(8) An individual licensed as a viatical settlement broker shall complete on a biennial basis fifteen hours of training related to viatical settlements and viatical settlement transactions, except that a life insurance producer who is operating as a viatical settlement broker pursuant to subsection (1) of this section shall not be subject to the requirements of this subsection.

Source: Laws 2001, LB 52, § 29; Laws 2003, LB 216, § 7; Laws 2008, LB853, § 3.

44-1104 Disciplinary actions.

(1) The director may suspend, revoke, or refuse to issue or renew a license issued under the Viatical Settlements Act or that of a life insurance producer operating as a viatical settlement broker under subdivision (1)(b) of section 44-1103 if the director finds that:

(a) There was any material misrepresentation in the application for the license;

(b) The applicant or licensee or any officer, partner, member, or key management personnel is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

(c) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(d) The applicant or licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo

contendere to, any felony or a Class I, II, or III misdemeanor, regardless of whether a judgment of conviction has been entered by the court;

(e) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to the Viatical Settlements Act;

(f) The viatical settlement broker or viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(g) The licensee no longer meets the requirements for initial licensure;

(h) The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, as the act existed on January 1, 2008, a financing entity, a special purpose entity, or a related provider trust;

(i) The applicant or licensee or any officer, partner, member, or key management personnel has violated any provision of the Viatical Settlements Act or has otherwise engaged in bad faith conduct with one or more viators; or

(j) The licensee has failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

(2) The director may suspend or revoke a license pursuant to subsection (1) of this section after notice and a hearing held in accordance with the Administrative Procedure Act.

(3) If the director denies a license application or refuses to renew a license pursuant to subsection (1) of this section, he or she shall notify the applicant or licensee of the reason for such denial or refusal of renewal. The applicant or licensee has thirty days after receipt of such notification to demand a hearing. The hearing shall be held within thirty days after receipt of such demand by the director and shall be held in accordance with the Administrative Procedure Act.

Source: Laws 2001, LB 52, § 30; Laws 2007, LB117, § 8; Laws 2008, LB853, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

44-1105 Approval of viatical settlement contracts and disclosure statements.

A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the director. The director shall disapprove a viatical settlement contract form or disclosure statement form if, in the director's opinion, the contract or provisions contained therein fail to meet the requirements of sections 44-1108, 44-1109, and 44-1111 and subsection (2) of section 44-1112 or are unreasonable, contrary to the interest of the public, or otherwise misleading or unfair to the viator. At the director's discretion, the director may require the submission of advertising material.

Source: Laws 2001, LB 52, § 31; Laws 2008, LB853, § 5.

44-1106 Reporting requirements; confidentiality.

(1) Each viatical settlement provider shall file with the director on or before March 1 of each year an annual statement containing such information as the director may prescribe by rule and regulation. Such information shall be

limited to only those transactions where the viator is a resident of this state. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, or health information of the viator or insured shall be filed with the director on a confidential basis.

(2) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity shall not disclose that identity as an insured or the insured's financial or medical information to any other person unless the disclosure:

(a) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(b) Is provided in response to an investigation or examination by the director or any other governmental officer or agency or pursuant to the requirements of subsection (3) of section 44-1112;

(c) Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

(d) Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(e) Is necessary to allow the viatical settlement provider or viatical settlement broker or his or her authorized representative to make contacts for the purpose of determining health status; or

(f) Is required to purchase stop-loss or financial guaranty coverage.

Source: Laws 2001, LB 52, § 32; Laws 2003, LB 216, § 8; Laws 2008, LB853, § 6.

44-1107 Examination; investigation.

(1)(a) The director may conduct an examination of a licensee under the Viatical Settlements Act as often as the director, in his or her sole discretion, deems appropriate. In scheduling and determining the nature, scope, and frequency of examination, the director shall consider such matters as consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other relevant criteria as determined by the director.

(b) For purposes of completing an examination of a licensee under the act, the director may examine or investigate any person or the business of any person, insofar as the examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the licensee.

(c) In lieu of an examination under the act of any foreign or alien licensee licensed in this state, the director may, in his or her sole discretion, accept an examination report on the licensee as prepared by the director for the licensee's state of domicile or port-of-entry state.

(d) As far as is practical, the examination of a foreign or alien licensee shall be made in cooperation with the insurance regulatory officials of other states in which the licensee transacts business.

(2)(a) A person required to be licensed under the act shall for five years retain copies of all:

(i) Proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract, purchase agreement, underwriting document, policy form, or application, whichever is later;

(ii) Checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction; and

(iii) Other records and documents related to the requirements of the act.

(b) This section does not relieve a person of the obligation to produce documents under subdivision (a) of this subsection to the director after the retention period has expired if the person has retained the documents.

(c) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(3)(a) Upon determining that an examination should be conducted, the director shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The director may also employ such other guidelines or procedures as he or she deems appropriate.

(b) Every licensee or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiner timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the director shall be grounds for the suspension, refusal, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the director's jurisdiction. Any proceedings for the suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the Administrative Procedure Act.

(c) The director may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. A person who is subpoenaed shall attend as a witness at the place specified in the subpoena anywhere within the state. He or she shall be entitled to the same fees

and mileage, if claimed, as a witness in the district court, with mileage to be computed at the rate provided in section 81-1176, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized, charged against, and paid by the licensee being examined.

(d) When making an examination under the Viatical Settlements Act, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which will be borne by the licensee that is the subject of the examination.

(e) Nothing contained in the act shall be construed to limit the director's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions of law made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in the act shall be construed to limit the director's authority to use, and, if appropriate, to make public, any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the director may, in his or her sole discretion, deem appropriate.

(4)(a) Examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the licensee or its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than forty-five days following completion of the examination, the examiner in charge shall file with the director a verified written report of examination under oath. Upon receipt of the verified report, the director shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days after the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and shall:

(i) Adopt the examination report as submitted or with modifications or corrections. If the examination report reveals that the licensee is operating in violation of any law, rule, regulation, or prior order of the director, the director may order the licensee to take any action the director considers necessary and appropriate to cure such violation; or

(ii) Reject the examination report with directions to the examiner to reopen the examination for purposes of obtaining additional data, documentation, or information and to resubmit a report pursuant to subdivision (4)(b) of this section.

(d) Any licensee aggrieved by any action of the director pursuant to subdivision (4)(c) of this section may, within ten days after such action, make written request to the director for a hearing. Upon receipt of the licensee's request for a

hearing, the director shall provide notice of the hearing no less than ten nor more than thirty days after the date of the licensee's request. The notice shall identify the subject of the hearing and the specific issues.

(e) Any hearing on an examination report shall be held in accordance with the Administrative Procedure Act.

(f) The examination report, with any modifications and corrections thereof, shall be accepted by the director and filed for public inspection immediately after the expiration of the times specified in subdivision (4)(d) of this section in the event that the licensee has not requested a hearing. Within thirty days after the filing of the examination report for public inspection, the licensee shall file affidavits executed by each of its directors stating under oath that they have received a copy of the examination report and related orders.

(5)(a) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the director unless required by law.

(b) Except as otherwise provided in the Viatical Settlements Act, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the director or any other person in the course of an examination made under the act, or in the course of analysis or investigation by the director of the financial condition or market conduct of a licensee, shall be confidential by law and privileged, shall not be subject to disclosure pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director is authorized to use the documents, materials, communications, or other information in the furtherance of any regulatory or legal action brought as part of the director's official duties.

(c) Documents, materials, communications, or other information, including all working papers and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(i) Created, produced, or obtained by or disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries in the course of assisting an examination made under the act or the law of another state or jurisdiction that is substantially similar to the act or assisting the director or the chief insurance regulatory official of another state in the analysis or investigation of the financial condition or market conduct of a licensee; or

(ii) Disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries under subdivision (e) of this subsection by the director or the chief insurance regulatory official of another state.

(d) Neither the director nor any person that received the documents, materials, communications, or other information while acting under the authority of the director, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, communications, or other information subject to this subsection.

(e) In order to assist in the performance of his or her duties, the director:

(i) May share documents, materials, communications, or other information, including the confidential and privileged documents, materials, communications, or other information subject to this subsection, with other state, federal, foreign, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, foreign, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, communications, or other information;

(ii) May receive documents, materials, communications, or other information, including otherwise confidential and privileged documents, materials, communications, or other information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, communications, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, communications, or other information; and

(iii) May enter into agreements governing sharing and use of information consistent with this subsection.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, communications, or other information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subdivision (e) of this subsection.

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Nothing contained in the act shall prevent or be construed as prohibiting the director from disclosing the content of an examination report, preliminary report or results, or any matter relating thereto to the director or chief insurance regulatory official of any other state or country, to any law enforcement official of this state or any other state, to any agency of the federal government at any time, or to the National Association of Insurance Commissioners so long as the agency or office receiving the examination report or matters relating thereto agrees in writing to hold the examination report or matters confidential and in a manner consistent with the act.

(6)(a) An examiner may not be appointed by the director if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under the Viatical Settlements Act. This subsection shall not be construed to automatically preclude an examiner from being:

(i) A viator;

(ii) An insured in a viaticated insurance policy; or

(iii) A beneficiary in an insurance policy that is proposed to be viaticated.

(b) Notwithstanding the requirements of this subsection, the director may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under the act.

(7) The reasonable expenses of the examination of a licensee conducted under the Viatical Settlements Act shall be fixed and determined by the director who shall collect the same from the licensee examined. The licensee shall reimburse the amount thereof upon presentation of a statement by the director. Reimbursement shall be limited to a reasonable allocation for the salary of each examiner plus actual expenses. All money collected by the director for examination of licensees shall be remitted in accordance with section 44-116.

(8)(a) No cause of action shall arise nor shall any liability be imposed against the director, the director's authorized representatives, or any examiner appointed by the director for any statements made or conduct performed in good faith while carrying out the provisions of the Viatical Settlements Act.

(b) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the director or the director's authorized representative or an examiner pursuant to an examination made under the act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way common-law or statutory privilege or immunity heretofore enjoyed by any person identified in this subsection.

(c) A person identified in this subsection is entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of the Viatical Settlements Act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(9) The director may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

Source: Laws 2001, LB 52, § 33; Laws 2008, LB853, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

44-1108 Disclosure; requirements; rights of viator.

(1) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the disclosures required by this section no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker and shall provide the following information:

(a) Possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

(b) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax laws and state franchise and income tax laws, and assistance should be sought from a professional tax advisor;

(c) Proceeds from the viatical settlement could be subject to the claims of creditors;

(d) Receipt of the proceeds from a viatical settlement may adversely effect the viator's eligibility for medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

(e) A viatical settlement broker represents exclusively the viator, not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator;

(f) The viator has the right to rescind the viatical settlement contract before the earlier of sixty calendar days after the date on which the viatical settlement contract is executed by all parties or thirty calendar days after the viatical settlement proceeds have been paid to the viator as provided in subsection (3) of section 44-1109. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given and the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded by the viator or the viator's estate. If a viatical settlement contract is rescinded, all viatical settlement proceeds and any premiums paid by the viatical settlement provider or purchaser shall be repaid to the viatical settlement provider or purchaser within sixty days of such rescission;

(g) Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's written acknowledgment that the ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;

(h) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits, that may exist under the policy or certificate to be forfeited by the viator, and assistance should be sought from a financial advisor;

(i) A brochure describing the process of viatical settlements. The National Association of Insurance Commissioners' form for the brochure shall be used unless one is developed by the director; and

(j) Following the execution of a viatical settlement contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided under the Viatical Settlements Act. This contact is limited to once every six months if the insured has a life expectancy of more than one year, and no more than once every three months if the insured has a life expectancy of one year or less. All such contacts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement or by the authorized representative of the viatical settlement provider.

The disclosure document shall contain the following language: All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about you, the insured, including your identity or the identity of family members, a spouse, or a significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.

(2) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(a) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;

(b) The name, business address, and telephone number of the viatical settlement provider;

(c) Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser;

(d) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, there is the possibility of a loss of coverage on the other lives under the policy, and consultation with an insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement is advised;

(e) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate and, if known, the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract; and

(f) Whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third-party escrow agent. The viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(a) The name, business address, and telephone number of the viatical settlement broker;

(b) A full, complete, and accurate description of all offers, counter-offers, acceptances, and rejections relating to the proposed viatical settlement contract;

(c) A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts;

(d) The amount and method of calculating the viatical settlement broker's compensation. Compensation includes anything of value paid or given to a viatical settlement broker for the placement of a policy; and

(e) If any portion of the viatical settlement broker's compensation is taken from a proposed viatical settlement offer, the viatical settlement broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.

(4) If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty days after the change.

Source: Laws 2001, LB 52, § 34; Laws 2008, LB853, § 8.

44-1108.01 Viatical settlement broker or viatical settlement provider; disclosure.

Before the initiation of a plan, transaction, or series of transactions, a viatical settlement broker or viatical settlement provider shall fully disclose to an insurer a plan, transaction, or series of transactions to which the viatical settlement broker or viatical settlement provider is a party, to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at anytime prior to or during the first five years after issuance of the policy.

Source: Laws 2008, LB853, § 9.

44-1109 Viatical settlement contract requirements.

(1)(a) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(i) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(ii) A document in which the insured consents, as required in subsection (2) of section 44-1106, to the release of his or her medical records to a viatical settlement provider, a viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.

(b) Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy, or within twenty days after entering any agreement, option, promise, or other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by subdivision (c) of this subsection.

(c) The viatical settlement provider shall deliver a copy of the medical release required under subdivision (a)(ii) of this subsection, a copy of the viator's application for the viatical settlement contract, the notice required under subdivision (b) of this subsection, and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The National Association of Insurance Commissioners' form for verification of coverage shall be used unless another form is developed and approved by the director.

(d) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty calendar days after the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on a National Associa-

tion of Insurance Commissioners' form or any other form approved by the director. The insurer shall accept an original, facsimile, or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this subsection shall be a violation of subsection (3) of section 44-1110 and section 44-1115.

(e) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract and represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, that the viator acknowledges he or she is entering into the viatical settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, that the viator acknowledges the insured has a terminal or chronic illness and the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(f) If a viatical settlement broker performs any of the activities listed in this subsection on behalf of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.

(2) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

(3) All viatical settlement contracts entered into in this state shall provide the viator with an absolute right to rescind the contract before the earlier of sixty calendar days after the date on which the viatical settlement contract is executed by all parties or thirty calendar days after the viatical settlement proceeds have been sent to the viator as provided in subsection (5) of this section. Rescission by the viator may be conditioned on the viator both giving notice and repaying to the viatical settlement provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded. If a viatical settlement contract is rescinded, all viatical settlement proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser shall be repaid to the viatical settlement provider or purchaser within sixty days of such rescission. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within five business days following receipt of a written demand from the viatical settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator or notice of the death of the insured if rescinded by reason of death of the insured within the applicable rescission period.

(4) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the documents or after the date the viatical settlement provider receives the documents if the viator

erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state-chartered or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

(5) Failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to subdivision (1)(g) of section 44-1108 renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed as sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or sends a check for delivery to the viator by the United States Postal Service or other nationally recognized delivery service.

(6) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed in this state or its authorized representatives and shall be limited to once every six months for insureds with a life expectancy of more than one year and to no more than once every three months for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

Source: Laws 2001, LB 52, § 35; Laws 2008, LB853, § 10.

44-1110 Prohibited acts.

(1) It is a violation of the Viatical Settlements Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of a viatical settlement contract or within a five-year period commencing on the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:

(a) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy if the total of the time covered under the conversion policy, plus the time covered under the group or individual policy, is at least sixty months. The time covered under the group policy shall be calculated without regard to any change in insurance carriers if the coverage has been continuous and under the same group sponsorship;

(b) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:

(i) The viator or insured is terminally or chronically ill;

(ii) The viator's spouse died;

(iii) The viator divorced his or her spouse;

(iv) The viator retired from full-time employment;

(v) The viator became physically or mentally disabled and a physician determined that the disability prevented the viator from maintaining full-time employment; or

(vi) A final order, judgment, or decree was entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator for all or a substantial part of the viator's assets; and

(c) The viator enters into a viatical settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two years after policy issuance, the following conditions are met:

(i) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in subdivision (15)(c)(v) of section 44-1102;

(ii) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the policy, including through an assumption or forgiveness of the loan; and

(iii) Neither the insured nor the policy has been evaluated for settlement.

(2) Copies of the independent evidence described in subdivision (1)(b) of this section and documents required by subsection (1) of section 44-1109 shall be submitted to the insurer when the viatical settlement provider or other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(3) If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification and the independent evidence described in subdivision (1)(b) of this section when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

(4) No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider, or viatical settlement broker sign any forms, disclosures, consent, or waiver form

that has not been expressly approved by the director for use in connection with viatical settlement contracts in this state.

(5) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.

Source: Laws 2001, LB 52, § 36; Laws 2008, LB853, § 11.

44-1111 Advertising for viatical settlements; guidelines and standards.

(1) The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements or related products or services to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements or related products or services through the advertising media and material used by licensees.

(2) This section applies to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. If disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation whenever possible.

(3) Every licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the licensee or licensees, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisement not furnished by the licensee.

(4) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the director from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(5)(a) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(b) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a free look period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(c) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(d) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(e) The words free, no cost, without cost, no additional cost, or at no extra cost or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(f)(i) Any testimonial, appraisal, analysis, or endorsement used in an advertisement must be genuine, represent the current opinion of the author, be applicable to the viatical settlement contract, product, or service advertised, and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonial, appraisal, analysis, or endorsement. In using a testimonial, an appraisal, an analysis, or an endorsement, the licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(ii) If the individual making a testimonial, an appraisal, an analysis, or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(iii) An advertisement shall not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals or any society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement provider is disclosed. If the entity making the approval or endorsement is owned, controlled, or managed by the viatical settlement provider, or receives any payment or other consideration from the viatical settlement provider for making an approval or endorsement, that fact shall be disclosed in the advertisement.

(iv) When a testimonial, an appraisal, an analysis, or an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five years after its use.

(v) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(vi) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services, or methods of marketing.

(vii) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

(viii) An advertisement shall not use a trade name, group designation, name of the parent company of a licensee, name of a particular division of the licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the licensee if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the licensee, or to create the impression that a company other than the licensee would have any responsibility for the financial obligation under a viatical settlement contract.

(ix) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(x) An advertisement may state that a viatical settlement provider is licensed in the state where the advertisement appears if it does not exaggerate that fact or suggest or imply that competing viatical settlement providers may not be licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department to find out if the state requires licensing and, if so, whether the viatical settlement provider is licensed.

(xi) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

(xii) The name of the licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, the name of any affiliate or controlling entity of the licensee, a service mark, a slogan, a symbol, or any other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(xiii) An advertisement shall not disclose or indirectly create the impression that any division or agency of the state or of the United States Government endorses, approves, or favors:

(A) Any licensee or its business practices or methods of operation;

(B) The merits, desirability, or advisability of any viatical settlement contract or viatical settlement program;

(C) Any viatical settlement contract or viatical settlement program; or

(D) Any life insurance policy or life insurance company.

(xiv) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average timeframe from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(xv) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

Source: Laws 2001, LB 52, § 37; Laws 2008, LB853, § 13.

44-1112 Fraud prevention and control.

(1)(a) A person shall not commit a fraudulent viatical settlement act.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of the Viatical Settlements Act or investigations of suspected or actual violations of the act.

(c) A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(2)(a) Viatical settlement contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

(b) The lack of a statement as required in this subsection does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(3)(a) Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the director the information required by, and in a manner prescribed by, the director.

(b) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the director the information required by, and in a manner prescribed by, the director.

(4)(a) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts, if the information is provided to or received from:

(i) The director or the director's employees, agents, or representatives;

(ii) The Director of Banking and Finance or his or her employees, agents, or representatives;

(iii) Federal, state, or local law enforcement officials or their employees, agents, or representatives;

(iv) The National Association of Insurance Commissioners, the National Association of Securities Dealers, or the North American Securities Administrators Association, employees, agents, or representatives of any such association, or any other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or

(v) The life insurer that issued the life insurance policy covering the life of the insured.

(b) This subsection does not apply to statements made with actual malice, fraudulent intent, or bad faith. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that this subsection does not apply because the person filing the report or furnishing the information did so with actual malice, fraudulent intent, or bad faith.

(c) A person furnishing information as identified in this subsection shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of the Viatical Settlements Act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time it was initiated. An award granted under this subdivision shall not apply to any person furnishing information concerning his or her own fraudulent viatical settlement acts.

(d) This section does not abrogate or modify common-law or statutory privileges or immunities enjoyed by a person described in this subsection.

(5)(a) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the director in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) This subsection does not prohibit release by the director of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(i) In administrative or judicial proceedings to enforce laws administered by the director;

(ii) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners; or

(iii) At the discretion of the director, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.

(c) Release of documents and evidence under this subsection does not abrogate or modify the privilege granted in this subsection.

(6) The Viatical Settlements Act shall not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(b) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the department; or

(c) Limit the powers granted elsewhere by the laws of this state to the director or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7)(a) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and

prevent fraudulent viatical settlement acts. At the discretion of the director, the director may order, or a licensee may request and the director may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

(b) Antifraud initiatives shall include:

(i) Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and

(ii) An antifraud plan submitted to the director. The antifraud plan shall include, but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) A description of the procedures for reporting possible fraudulent viatical settlement acts to the director;

(C) A description of the plan for antifraud education and training of underwriters and other personnel; and

(D) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(c) Antifraud plans submitted to the director shall be privileged and confidential, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

Source: Laws 2001, LB 52, § 38; Laws 2008, LB853, § 14.

44-1113 Injunctions; civil remedies; violation; penalty.

(1) In addition to the penalties and other enforcement provisions of the Viatical Settlements Act, if any person violates the act or any rule or regulation implementing the act, the director may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the director determines are necessary to restrain the person from committing the violation.

(2) Any person damaged by the acts of a person in violation of the act may bring a civil action against the person committing the violation in a court of competent jurisdiction.

(3) The director may issue, in accordance with the Administrative Procedure Act, a cease and desist order upon a person that violates any provision of the Viatical Settlements Act, any rule, regulation, or order adopted or issued by the director, or any written agreement entered into between such person and the director.

(4) When the director finds that an activity in violation of the act presents an immediate danger to the public that requires an immediate final order, the director may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the director begins nonemergency cease

and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to the Administrative Procedure Act.

(5) In addition to the penalties and other enforcement provisions of the Viatical Settlements Act, any person who violates the act is subject to civil penalties of up to one thousand dollars per violation. Imposition of civil penalties shall be pursuant to an order of the director issued under the Administrative Procedure Act. The director's order may require a person found to be in violation of the Viatical Settlements Act to make restitution to persons aggrieved by violations of the act.

(6) A person who is found by a court of competent jurisdiction, pursuant to an action initiated by the director, to have committed a fraudulent viatical settlement act, is subject to a civil penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the second violation, and fifteen thousand dollars for each subsequent violation.

(7) A person convicted of a violation of the act by a court of competent jurisdiction shall be guilty of a Class III misdemeanor. A person convicted of a violation of the act shall be ordered to pay restitution to persons aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment. A prosecution under this subsection shall be in lieu of an action under subsection (6) of this section.

(8) Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator.

Source: Laws 2001, LB 52, § 39; Laws 2008, LB853, § 15.

Cross References

Administrative Procedure Act, see section 84-920.

44-1114 Director; powers.

The director shall have the authority to:

(1) Adopt and promulgate rules and regulations to carry out the Viatical Settlements Act;

(2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons with a terminal or chronic illness or condition. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person who is chronically ill or terminally ill;

(3) Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and brokers;

(4) Require a bond or other mechanism for financial accountability for viatical settlement providers and brokers; and

(5) Adopt rules and regulations governing the relationship and responsibilities of insurers, viatical settlement providers, and viatical settlement brokers during the viatication of a life insurance policy or certificate.

Source: Laws 2001, LB 52, § 40; Laws 2008, LB853, § 16.

44-1115 Unfair trade practices.

A violation of the Viatical Settlements Act, including the commission of a fraudulent viatical settlement act, shall be considered an unfair trade practice under the Unfair Insurance Trade Practices Act subject to the penalties contained in the act.

Source: Laws 2001, LB 52, § 41; Laws 2008, LB853, § 17.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-1117 Fraudulent viatical settlement act; additional prohibited acts.

(1) With respect to any viatical settlement contract or insurance policy, no viatical settlement broker shall knowingly solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker.

(2) With respect to any viatical settlement contract or insurance policy, no viatical settlement provider shall knowingly enter into a viatical settlement contract with a viator if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract.

(3) A violation of subsection (1) or (2) of this section shall be a fraudulent viatical settlement act.

(4) No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising, and marketing materials as may be prescribed by rule and regulation have been filed with the director. In no event shall any marketing materials expressly reference that the insurance is free for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of the Viatical Settlements Act.

(5) No life insurance producer, insurance company, viatical settlement broker, or viatical settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

Source: Laws 2008, LB853, § 12.

ARTICLE 15

UNFAIR PRACTICES

(a) UNFAIR INSURANCE TRADE PRACTICES ACT

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

(a) UNFAIR INSURANCE TRADE PRACTICES ACT

44-1521 Act, how cited.

Sections 44-1521 to 44-1535 shall be known and may be cited as the Unfair Insurance Trade Practices Act.

Source: Laws 1991, LB 234, § 3; Laws 2008, LB855, § 6.

44-1534.01 Director; power to protect members of the United States Armed Forces; rules and regulations.

The Director of Insurance may adopt and promulgate rules and regulations to protect members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair as required by the federal Military Personnel Financial Services Protection Act, Public Law 109-290, as such law existed on July 18, 2008.

Source: Laws 2008, LB855, § 7.

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

44-1540 Unfair claims settlement practice; acts and practices prohibited.

Any of the following acts or practices by an insurer, if committed in violation of section 44-1539, shall be an unfair claims settlement practice:

(1) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

(4) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear;

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of property and casualty claims (a) in which coverage and the amount of the loss are reasonably clear and (b) for loss of tangible personal property within real property which is insured by a policy subject to section 44-501.02 and which is wholly destroyed by fire, tornado, windstorm, lightning, or explosion;

(6) Compelling insureds or beneficiaries to institute litigation to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in litigation brought by them;

(7) Refusing to pay claims without conducting a reasonable investigation;

(8) Failing to affirm or deny coverage of a claim within a reasonable time after having completed its investigation related to such claim;

(9) Attempting to settle a claim for less than the amount to which a reasonable person would believe the insured or beneficiary was entitled by

reference to written or printed advertising material accompanying or made part of an application;

(10) Attempting to settle claims on the basis of an application which was materially altered without notice to or knowledge or consent of the insured;

(11) Making a claims payment to an insured or beneficiary without indicating the coverage under which each payment is being made;

(12) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof-of-loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof-of-loss form;

(13) Failing, in the case of the denial of a claim or the offer of a compromise settlement, to promptly provide a reasonable and accurate explanation of the basis for such action;

(14) Failing to provide forms necessary to present claims with reasonable explanations regarding their use within fifteen working days of a request;

(15) Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or affiliated with the insurer are performed in a skillful manner. For purposes of this subdivision, a repairer is affiliated with the insurer if there is a preexisting arrangement, understanding, agreement, or contract between the insurer and repairer for services in connection with claims on policies issued by the insurer;

(16) Requiring the insured or claimant to use a particular company or location for motor vehicle repair. Nothing in this subdivision shall prohibit an insurer from entering into discount agreements with companies and locations for motor vehicle repair or otherwise entering into any business arrangements or affiliations which reduce the cost of motor vehicle repair if the insured or claimant has the right to use a particular company or reasonably available location for motor vehicle repair. If the insured or claimant chooses to use a particular company or location other than the one providing the lowest estimate for like kind and quality motor vehicle repair, the insurer shall not be liable for any cost exceeding the lowest estimate. For purposes of this subdivision, motor vehicle repair shall include motor vehicle glass replacement and motor vehicle glass repair; and

(17) Failing to provide coverage information or coordinate benefits pursuant to section 68-928.

Source: Laws 1991, LB 234, § 22; Laws 1992, LB 1006, § 16; Laws 1994, LB 978, § 24; Laws 1997, LB 543, § 1; Laws 2002, LB 58, § 1; Laws 2005, LB 589, § 9; Laws 2006, LB 1248, § 59.

(c) MOTOR VEHICLE INSURANCE DATA BASE

44-1545 Noncompliance; effect.

Failure by an insurance company subject to sections 60-3,136 to 60-3,139 to comply with the requirements of such sections and the rules and regulations adopted and promulgated under such sections by the Department of Motor Vehicles shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Source: Laws 2002, LB 488, § 7; Laws 2005, LB 274, § 229.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 16
GROUP INSURANCE

Section

44-1601 Life insurance; policy; issuance; requirements.

No policy of group life insurance shall be delivered in this state unless it is issued under one of the provisions of sections 21-1740, 44-1602 to 44-1606.03, and 44-1615 or under a policy or contract issued to any other substantially similar group which, in the discretion of the Director of Insurance, may be subject to the issuance of a group life insurance policy or contract.

Source: Laws 1949, c. 150, § 1(1), p. 377; Laws 1961, c. 210, § 5, p. 628; Laws 1969, c. 361, § 3, p. 1286; Laws 1983, LB 298, § 1; Laws 1996, LB 948, § 123; Laws 2008, LB855, § 8.

44-1602 Life insurance; policy issued to an employer; requirements.

A policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer shall be subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof. The policy may provide that the term employees shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, partners, and members of one or more affiliated corporations, proprietors, partnerships, or limited liability companies if the business of the employer and of such affiliated corporations, proprietors, partnerships, or limited liability companies is under common control. The policy may provide that the term employees shall include the individual proprietor, partners, or members if the employer is an individual proprietor, partnership, or limited liability company. The policy may provide that the term employee may include retired employees, former employees, and directors of a corporate employer; and

(2) The premium for the policy shall be paid either from the employer's funds or from funds contributed by the insured employees or from both such funds. A policy on which no part of the premium is to be derived from funds contributed

by the insured employees must insure all eligible employees, except those who reject the coverage in writing, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 1949, c. 150, § 1(1), p. 377; Laws 1957, c. 192, § 1, p. 670; Laws 1959, c. 212, § 1, p. 733; Laws 1993, LB 121, § 233; Laws 2006, LB 875, § 2; Laws 2008, LB855, § 9.

44-1603 Life insurance; policy issued to creditor; requirements.

A policy issued to a creditor or its parent holding company or to a trustee or agent designated by two or more creditors, which creditor, parent holding company, affiliate, trustee, or agent shall be deemed the policyholder, to insure debtors of the creditor shall be subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or creditors, or all of any class or classes of the creditors. The policy may provide that the term debtors shall include borrowers of money or purchasers or lessees of goods, services, or property for which payment is arranged through a credit transaction, the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors, partnerships, or limited liability companies if the business of the policyholder and of such affiliated corporations, proprietors, partnerships, or limited liability companies is under common control;

(2) The premium for the policy shall be paid by the policyholder from the creditor's funds, from charges collected from the insured debtors, or from both. A policy on which no part of the premiums is to be derived from the funds contributed by insured debtors specifically for their insurance must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer;

(3) The amount of insurance on the life of any debtor shall at no time exceed the greater of the scheduled or actual amount of unpaid indebtedness to the creditor, except that insurance written in connection with open-end credit having a credit limit exceeding ten thousand dollars may be in an amount not exceeding the credit limit;

(4) The insurance shall be payable to the creditor or any successor to the right, title, and interest of the creditor. The payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment, and any excess of the insurance shall be payable to the estate of the insured; and

(5) Notwithstanding subdivisions (1) through (4) of this section, insurance on agricultural credit transaction commitments may be written up to the amount of the loan commitment on a nondecreasing or level-term plan and insurance on educational credit transaction commitments may be written up to the amount of the loan commitment less the amount of any repayments made on the loan.

Source: Laws 1949, c. 150, § 1(2), p. 378; Laws 1955, c. 180, § 1, p. 508; Laws 1957, c. 192, § 2, p. 671; Laws 1967, c. 273, § 1, p. 737; Laws 1974, LB 944, § 1; Laws 1993, LB 121, § 234; Laws 2008, LB855, § 10.

44-1604 Life insurance; policy issued to a labor union or similar employee organization; requirements.

A policy issued to a labor union or similar employee organization, which shall be deemed the policyholder, to insure members of such union or organization for the benefit of persons other than the union or organization or any of its officials, representatives, or agents shall be subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union or organization, or all of any class or classes thereof; and

(2) The premium for the policy shall be paid either from the union's or organization's funds or from funds contributed by the insured members specifically for their insurance or from both. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, except those who reject the coverage in writing, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 1949, c. 150, § 1(3), p. 379; Laws 1957, c. 192, § 3, p. 673; Laws 2008, LB855, § 11.

44-1605 Life insurance; policy issued to trust or trustees of a fund; requirements.

A policy issued to a trust or to the trustees of a fund established or adopted by two or more employers or by one or more labor unions or similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, which trust or trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or organizations for the benefit of persons other than the employers or the unions or organizations shall be subject to the following requirements:

(1) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or organizations, or all of any class or classes thereof. The policy may provide that the term employees shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, members, and partners of one or more affiliated corporations, proprietorships, or partnerships if the business of the employer and of the affiliated corporations, proprietorships, or partnerships is under common control. The policy may provide that the term employees shall include the individual proprietor or partners if the employer is an individual proprietorship or partnership. The policy may provide that the term employees may include retired employees, former employees, and directors of a corporate employer. The policy may provide that the term employees shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship; and

(2) The premium for the policy shall be paid from funds contributed by the employer or employers of the insured persons, by the union or unions or similar employee organizations, or by both, or from funds contributed by the insured persons or from both the insured persons and the employers or unions or similar employee organizations. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance shall insure all eligible persons, except those who reject the

coverage in writing, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 1949, c. 150, § 1(4), p. 380; Laws 1957, c. 192, § 4, p. 674; Laws 1969, c. 376, § 1, p. 1336; Laws 1989, LB 92, § 176; Laws 1993, LB 121, § 235; Laws 2008, LB855, § 12.

44-1606.01 Life insurance; policy issued to association or trust; requirements.

(1) A policy may be issued to an association or to a trust or to the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of one hundred persons, shall have been organized and maintained in good faith for purposes other than that of obtaining insurance, shall have been in active existence for at least two years, and shall have a constitution and bylaws which provide that (a) the association or associations shall hold regular meetings not less than annually to further the purposes of the members, (b) except for credit unions, the association or associations shall collect dues or solicit contributions from members, and (c) the members shall have voting privileges and representation on the governing board and committees.

(2) The policy shall be subject to the following requirements:

(a) The policy may insure members of the association or associations, employees thereof or employees of members, or one or more of the preceding or all of any class or classes thereof for the benefit of persons other than the employee's employer;

(b) The premium for the policy shall be paid from funds contributed by the association or associations, by the employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the associations or employer members; and

(c) A policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for their insurance must insure all eligible persons, except those who reject the coverage in writing, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 1957, c. 192, § 5, p. 675; Laws 1967, c. 274, § 1, p. 739; Laws 1972, LB 1189, § 1; Laws 2008, LB855, § 13.

44-1606.02 Life insurance; policy issued to credit union or trust; requirements.

A policy issued to a credit union or to a trustee or trustees or agent designated by two or more credit unions, which credit union, trustee, trustees, or agent shall be deemed the policyholder, to insure members of the credit union or credit unions for the benefit of persons other than the credit union or credit unions, trustee or trustees, or agent or any of their officials, shall be subject to the following requirements:

(1) The members eligible for insurance shall be all of the members of the credit union or credit unions, or all of any class or classes of the members; and

(2) The premium for the policy shall be paid by the policyholder from the credit union's funds and shall insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 2008, LB855, § 14.

44-1606.03 Group life insurance; policy; requirements.

(1) Group life insurance offered to a resident of this state under a group life insurance policy issued to a group other than one described in sections 21-1740, 44-1602 to 44-1606.02, and 44-1615 shall be subject to the following requirements:

(a) A group life insurance policy shall not be delivered in this state unless the Director of Insurance finds that:

(i) The issuance of the group policy is not contrary to the best interests of the public;

(ii) The issuance of the group policy would result in economies of acquisition or administration; and

(iii) The benefits are reasonable in relation to the premiums charged;

(b) A group life insurance policy shall not be offered in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those contained in subdivision (1)(a) of this section has made a determination that the requirements have been met;

(c) The premium for the policy shall be paid either from the policyholder's funds or from funds contributed by the covered persons, or from both; and

(d) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

(2)(a) In the case of a program of insurance which, if issued on a group basis, would not qualify under sections 21-1740, 44-1602 to 44-1606.02, and 44-1615, the insurer shall cause to be distributed to prospective insureds a written notice that compensation shall or may be paid, if compensation of any kind shall or may be paid, to:

(i) A policyholder or sponsoring or endorsing entity in the case of a group policy; or

(ii) A sponsoring or endorsing entity in the case of an individual, blanket, or franchise policy marketed by means of direct response solicitation.

(b) The notice shall be distributed:

(i) Whether compensation is direct or indirect; and

(ii) Whether the compensation is paid to or retained by the policyholder or sponsoring or endorsing entity, or paid to or retained by a third party at the direction of the policyholder or sponsoring or endorsing entity, or an entity affiliated therewith by way of ownership, contract, or employment.

(c) The notice required by this section shall be placed on or accompany an application or enrollment form provided to prospective insureds.

(d) For purposes of this section:

(i) Direct response solicitation means a solicitation by a sponsoring or endorsing entity through the mail, telephone, or other mass communications media; and

(ii) Sponsoring or endorsing entity means an organization that has arranged for the offering of a program of insurance in a manner that communicates that eligibility for participation in the program is dependent upon affiliation with the organization or that it encourages participation in the program.

Source: Laws 2008, LB855, § 15.

44-1607 Life insurance; policy; contents.

No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions or provisions which in the opinion of the Director of Insurance are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder, except that provisions of subdivisions (6) through (10) of this section shall not apply to policies insuring the lives of debtors, that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies, and that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the Director of Insurance is or are equitable to the insured persons and to the policyholder, but nothing in this section shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

(1) A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period;

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his or her insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him or her. This provision shall not preclude the assertion at any time of defenses based upon provisions in the policy that relate to eligibility for coverage;

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or, in the event of death or incapacity of the insured person, to his or her beneficiary or personal representative;

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his or her coverage;

(5) A provision specifying that an equitable adjustment of premiums, of benefits, or of both is to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used;

(6) A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, except that if the policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding two thousand dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured;

(7) A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he or she is entitled, to whom the insurance benefits are payable, a statement as to any dependent's coverage included in the certificate, and the rights and conditions set forth in subdivisions (8), (9), and (10) of this section;

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him or her by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits if application for the individual policy is made and the first premium paid to the insurer within thirty-one days after such termination and if (a) the individual policy shall, at the option of such person, be on any one of the forms customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance, (b) the individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which the person becomes eligible under the same or any other group policy within thirty-one days after termination, except that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this subdivision, be included in the amount which is considered to cease because of such termination, (c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his or her age attained on the effective date of the individual policy, and (d) subject to the conditions set forth in subdivisions (8)(a) through (c) of this section, the conversion privilege shall also be available (i) to a spouse and a surviving dependent, if any, at the death of the employee or member, with respect to the coverage under the group policy that terminates by reason of death and (ii) to the dependent of the employee or member upon termination of coverage of the dependent, while the employee or member remains insured under the group policy, by reason of the dependent ceasing to be a qualified family member under the group policy;

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him or her by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by subdivision (8) of this section, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he or she is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and ten thousand dollars;

(10) A provision that if a person insured under the group policy or the insured dependent of a covered person dies during the period within which he or she would have been entitled to have an individual policy issued to him or her in accordance with subdivision (8) or (9) of this section and before such an individual policy shall have become effective, the amount of life insurance which he or she would have been entitled to have issued to him or her under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made;

(11) If active employment is a condition of insurance, a provision that an insured may continue coverage during the insured's total disability by timely payment to the policyholder of that portion, if any, of the premium that would have been required from the insured had total disability not occurred. The continuation shall be on a premium-paying basis for a period of six months from the date on which the total disability started, but not beyond the earlier of:

(a) Approval by the insurer of continuation of the coverage under any disability provision which the group insurance policy may contain; or

(b) The discontinuance of the group insurance policy; and

(12) In the case of a policy insuring the lives of debtors, a provision that the insurer will furnish to the policyholder for delivery to each debtor insured under the policy a certificate of insurance describing the coverage and specifying that any death benefit shall first be applied to reduce or extinguish the indebtedness.

Source: Laws 1949, c. 150, § 2, p. 383; Laws 1957, c. 192, § 7, p. 677; Laws 1989, LB 92, § 177; Laws 2008, LB855, § 16.

44-1607.01 Life insurance; individual policies; issuance; restrictions.

Individual life insurance policies, uniform as to amounts of insurance for each reasonable class eligible therefor, may be issued on a franchise or wholesale basis to five or more employees of a common employer or ten or more members of any trade or professional association, of a labor union or similar employee organization, or of any other association having had an active existence for at least two years when such association or union or organization has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance. Nothing in this section shall be construed to

prohibit the issuance of individual life insurance policies on salary savings, bank draft, or similar type plans.

Source: Laws 1955, c. 181, § 1, p. 510; Laws 1989, LB 92, § 178; Laws 2008, LB855, § 17.

44-1613 Life insurance; individual policy; time within which to exercise rights; notice.

If any individual insured under a group life insurance policy hereafter delivered in this state becomes entitled under the terms of such policy to have an individual policy of life insurance issued without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least fifteen days prior to the expiration date of such period, then in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire fifteen days after the individual is given such notice but in no event shall such additional period extend beyond sixty days after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last-known address of the individual or mailed by the insurer to the last-known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section.

Source: Laws 1957, c. 192, § 8, p. 681; Laws 2008, LB855, § 18.

44-1614 Life insurance; extension to spouse and children of employee or member; limitation.

Insurance under any group life insurance policy issued pursuant to section 44-1602, 44-1604, 44-1605, 44-1606, 44-1606.01, 44-1606.02, or 44-1606.03 may be extended to insure the employees or members against loss due to the death of their spouses and dependent children, or any class or classes thereof. Premiums for the insurance shall be paid either from funds contributed by the employer, the labor union or similar employee organization, or other person to whom the policy has been issued or from funds contributed by the covered persons, or from both. A policy on which no part of the premium for the spouse's and dependent child's coverage is to be derived from funds contributed by the covered persons shall insure all eligible employees or members with respect to their spouses and dependent children, or any class or classes of employees or members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. The amount of insurance for any covered spouse or dependent child under the policy may not exceed fifty percent of the amount of insurance for which the employee or member is insured.

Source: Laws 1957, c. 192, § 9, p. 681; Laws 1961, c. 224, § 1, p. 666; Laws 1972, LB 1189, § 2; Laws 1989, LB 92, § 179; Laws 2008, LB855, § 19.

ARTICLE 19
TITLE INSURANCE

(b) TITLE INSURERS ACT

Section
44-1988. Reserves.

(b) TITLE INSURERS ACT

44-1988 Reserves.

(1) In determining the financial condition of a title insurer transacting the business of title insurance under the Title Insurers Act, the general provisions of the insurance laws of this state requiring the establishment of reserves sufficient to cover all known and unknown liabilities, including allocated and unallocated loss adjustment expense, shall apply except as provided in subsections (2) through (4) of this section.

(2) A title insurer shall establish and maintain a known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims, and allocated loss adjustment expenses arising under title insurance policies, guaranteed certificates of title, guaranteed searches, and guaranteed abstracts of title and all unpaid losses, claims, and allocated loss adjustment expenses for which the title insurer may be liable and for which the title insurer has received notice by or on behalf of the insured, holder of a guarantee or escrow, or security depositor.

(3)(a) If a title insurer is a foreign or non-United-States title insurer, the title insurer shall establish and maintain a statutory or unearned premium reserve consisting of the amount of statutory or unearned premium reserve required by the laws of the domiciliary state of the title insurer.

(b)(i) If a title insurer is a domestic insurer of this state, the title insurer shall establish and maintain a statutory or unearned premium reserve in an amount equal to seventeen cents per one thousand dollars of net retained liability for each insurance policy.

(ii) The amount set aside in the reserve required under subdivision (3)(b)(i) of this section shall be released from the reserve and restored to net profits over a period of twenty years pursuant to the following formula: Thirty percent of the aggregate sum in the year next succeeding the year of addition; fifteen percent of the aggregate sum in the next succeeding year; ten percent of the aggregate sum in each of the next succeeding two years; five percent of the aggregate sum in each of the next succeeding two years; three percent of the aggregate sum in each of the next succeeding two years; two percent of the aggregate sum in each of the next succeeding seven years; and one percent of the aggregate sum in each of the next succeeding five years. For each year in which a release of statutory or unearned premium reserve is authorized under this subdivision, such reserve shall be released over the course of the year in twelve equal monthly amounts, beginning on July 1.

(c)(i) If a title insurer that is organized under the laws of another state transfers its domicile to this state, the statutory or unearned premium reserve shall be that amount required by the laws of the state of the title insurer's former state of domicile as of the date of transfer of domicile. Thereafter, the aggregate of such statutory or unearned premium reserve shall be released

from the reserve and restored to profits over a period of twenty years pursuant to the formula set forth in subdivision (3)(c)(iii) of this section.

(ii) Following the transfer of domicile to this state of the title insurer described in subdivision (3)(c)(i) of this section, for business written after the date of transfer of domicile, the title insurer shall add to and set aside in the statutory or unearned premium reserve such amount as provided in subdivision (3)(b)(i) of this section.

(iii) The amounts set aside in the reserve required under subdivision (3)(c)(i) of this section shall be released from the reserve and restored to net profits over a period of twenty years pursuant to the following formula: An initial release of thirty percent of the aggregate of such reserves on the forty-fifth day following the last day of the calendar quarter in which the insurer transfers its domicile; fifteen percent of the aggregate sum in the next succeeding year; ten percent of the aggregate sum in each of the next succeeding two years; five percent of the aggregate sum in each of the next succeeding two years; three percent of the aggregate sum in each of the next succeeding two years; two percent of the aggregate sum in each of the next succeeding seven years; and one percent of the aggregate sum in each of the next succeeding five years. For each year in which a release of statutory or unearned premium reserve is authorized under this subdivision, such reserve shall be released over the course of the year in twelve equal monthly amounts, beginning on July 1.

(4) A title insurer shall establish and maintain a supplemental reserve consisting of any other reserves necessary, when taken in combination with the reserves required by subsections (2) and (3) of this section, to cover the title insurer's liabilities with respect to all losses, claims, and loss adjustment expenses.

(5) Each title insurer subject to the Title Insurers Act shall file with its annual financial statement required under section 44-322 a certification by a member in good standing of the American Academy of Actuaries. The actuarial certification required of a title insurer shall conform to the National Association of Insurance Commissioners' annual statement instructions for title insurers.

Source: Laws 1997, LB 53, § 11; Laws 2006, LB 875, § 3; Laws 2009, LB192, § 2.

ARTICLE 21
HOLDING COMPANIES

Section
44-2131. Fees.
44-2132. Registration of insurers.

44-2131 Fees.

The total fee for filing the documents required by sections 44-2126 to 44-2130 and all amendments to such filings shall be one thousand dollars. The initial fee for registration required by the provisions of section 44-2132 shall be one thousand dollars, and an additional fee of two hundred dollars shall be payable on May 1 of each calendar year thereafter so long as such registration continues. The fees provided for by this section shall be payable to the Department of Insurance and shall be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund.

Source: Laws 1991, LB 236, § 34; Laws 1993, LB 583, § 84; Laws 2005, LB 119, § 10.

44-2132 Registration of insurers.

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director, except that registration shall not be required for a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section, subsection (1) of section 44-2133, sections 44-2134 and 44-2136, and either subsection (2) of section 44-2133 or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by May 1 of each year for the previous calendar year unless the director for good cause shown extends the time for such initial or annual registration and then within such extended time. The director may require any insurer which is authorized to do business in the state, which is a member of an insurance holding company system, and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement on a form prescribed by the National Association of Insurance Commissioners which shall contain the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and

(e) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) It shall not be necessary to disclose on the registration statement information which is not material for the purposes of this section. Unless the director by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

(5) Subject to the requirements of section 44-2134, each registered insurer shall give notice to the director of all dividends and other distributions to shareholders within five business days following the declaration thereof and shall not pay any such dividends or other distributions to shareholders within ten business days following receipt of such notice by the director unless for good cause shown the director has approved such payment within such ten-business-day period.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer when such information is reasonably necessary to enable the insurer to comply with the Insurance Holding Company System Act.

(7) The director shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section shall not apply to any insurer, information, or transaction if and to the extent that the director by rule, regulation, or order exempts the same from this section.

(11) Any person may file with the director a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the director disallows such a disclaimer. The director shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(12) The failure to file a registration statement or any summary of the registration statement thereto required by this section within the time specified for such filing shall be a violation of this section.

Source: Laws 1991, LB 236, § 12; Laws 1996, LB 689, § 2; Laws 2005, LB 119, § 11.

ARTICLE 28

NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

Section
44-2803. Health care provider, defined.
44-2804. Physician, defined.
44-2824. Health care provider; qualify under act; conditions.
44-2827. Health care provider; proof of financial responsibility; filing by insurer.
44-2835. Malpractice claim; settled or adjudicated to final judgment; report; contents; forwarded to Department of Health and Human Services.
44-2847. Medical review panel; not to consider disputed questions of law; adviser to panel.

44-2803 Health care provider, defined.

Health care provider means: (1) A physician; (2) a certified registered nurse anesthetist; (3) an individual, partnership, limited liability company, corporation, association, facility, institution, or other entity authorized by law to provide professional medical services by physicians or certified registered nurse anesthetists; (4) a hospital; or (5) a personal representative as defined in section 30-2209 who is successor or assignee of any health care provider designated in subdivisions (1) through (4) of this section.

Source: Laws 1976, LB 434, § 3; Laws 1993, LB 121, § 245; Laws 1995, LB 563, § 1; Laws 2005, LB 256, § 17.

44-2804 Physician, defined.

Physician shall mean a person with an unlimited license to practice medicine in this state pursuant to the Medicine and Surgery Practice Act or a person with a license to practice osteopathic medicine or osteopathic medicine and surgery in this state pursuant to sections 38-2029 to 38-2033.

Source: Laws 1976, LB 434, § 4; Laws 1988, LB 1100, § 3; Laws 2007, LB463, § 1136.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

44-2824 Health care provider; qualify under act; conditions.

(1) To be qualified under the Nebraska Hospital-Medical Liability Act, a health care provider or such health care provider's employer, employee, partner, or limited liability company member shall:

(a) File with the director proof of financial responsibility, pursuant to section 44-2827 or 44-2827.01, in the amount of five hundred thousand dollars for each occurrence. In the case of physicians or certified registered nurse anesthetists and their employers, employees, partners, or limited liability company members an aggregate liability amount of one million dollars for all occurrences or claims made in any policy year for each named insured shall be provided. In the case of hospitals and their employees, an aggregate liability amount of three

million dollars for all occurrences or claims made in any policy year or risk-loss trust year shall be provided. Such policy may be written on either an occurrence or a claims-made basis. Any risk-loss trust shall be established and maintained only on an occurrence basis. Such qualification shall remain effective only as long as insurance coverage or risk-loss trust coverage as required remains effective; and

(b) Pay the surcharge and any special surcharge levied on all health care providers pursuant to sections 44-2829 to 44-2831.

(2) Subject to the requirements in subsections (1) and (4) of this section, the qualification of a health care provider shall be either on an occurrence or claims-made basis and shall be the same as the insurance coverage provided by the insured's policy.

(3) The director shall have authority to permit qualification of health care providers who have retired or ceased doing business if such health care providers have primary insurance coverage under subsection (1) of this section.

(4) A health care provider who is not qualified under the act at the time of the alleged occurrence giving rise to a claim shall not, for purposes of that claim, qualify under the act notwithstanding subsequent filing of proof of financial responsibility and payment of a required surcharge.

(5) Qualification of a health care provider under the Nebraska Hospital-Medical Liability Act shall continue only as long as the health care provider meets the requirements for qualification. A health care provider who has once qualified under the act and who fails to renew or continue his or her qualification in the manner provided by law and by the rules and regulations of the Department of Insurance shall cease to be qualified under the act.

Source: Laws 1976, LB 434, § 24; Laws 1984, LB 692, § 7; Laws 1986, LB 1005, § 1; Laws 1990, LB 542, § 3; Laws 1993, LB 121, § 247; Laws 1994, LB 884, § 59; Laws 2004, LB 998, § 1; Laws 2005, LB 256, § 18.

44-2827 Health care provider; proof of financial responsibility; filing by insurer.

Financial responsibility of a health care provider may be established only by filing with the director proof that the health care provider is insured pursuant to sections 44-2837 to 44-2839 or by a policy of professional liability insurance in a company authorized to do business in Nebraska. Such insurance shall be in the amount of five hundred thousand dollars per occurrence and, in cases involving physicians or certified registered nurse anesthetists, but not with respect to hospitals, an aggregate liability of at least one million dollars for all occurrences or claims made in any policy year shall be provided. In the case of hospitals and their employees, an aggregate liability amount of three million dollars for all occurrences or claims made in any policy year shall be provided. The filing shall state the premium charged for the policy of insurance.

Source: Laws 1976, LB 434, § 27; Laws 1986, LB 1005, § 3; Laws 2003, LB 146, § 2; Laws 2004, LB 998, § 3; Laws 2005, LB 256, § 19.

44-2835 Malpractice claim; settled or adjudicated to final judgment; report; contents; forwarded to Department of Health and Human Services.

(1) Each malpractice claim settled or adjudicated to final judgment against a health care provider under the Nebraska Hospital-Medical Liability Act shall be reported to the director by the plaintiff's attorney and by the health care provider or his or her insurer or risk manager within sixty days following final disposition of the claim. Such report to the director shall state the following:

(a) The nature of the claim;

(b) The alleged injury and the damages asserted;

(c) Attorney's fees and expenses incurred in connection with the claim or defense; and

(d) The amount of any settlement or judgment.

(2) The director shall forward the name of every health care provider, except a hospital, against whom a settlement has been made or judgment has been rendered under the act to the Department of Health and Human Services for such action, if any, as it deems to be appropriate under the circumstances.

Source: Laws 1976, LB 434, § 35; Laws 1994, LB 1223, § 1; Laws 1996, LB 1044, § 241; Laws 2007, LB296, § 180.

44-2847 Medical review panel; not to consider disputed questions of law; adviser to panel.

(1) Medical review panels shall be concerned only with the determination of the questions set forth in section 44-2843. Such panels shall not consider or report on disputed questions of law.

(2) To provide for uniformity of procedure, the Department of Health and Human Services may appoint a doctor of medicine from the members of the Board of Medicine and Surgery who may sit with each panel as an observer and as an adviser on procedure but without a vote.

Source: Laws 1976, LB 434, § 47; Laws 1996, LB 1044, § 242; Laws 1999, LB 828, § 5; Laws 2000, LB 1115, § 4; Laws 2007, LB296, § 181.

ARTICLE 29

NEBRASKA HOSPITAL AND PHYSICIANS MUTUAL INSURANCE ASSOCIATION ACT

Section

44-2901 Hospitals; mutual insurance association; how incorporated; purpose.

Any three or more hospitals as defined in section 71-419, which are located in this state and licensed by the Department of Health and Human Services, may incorporate a mutual insurance association to insure member hospitals and their officers, directors, employees, and volunteer workers against liability arising from rendering, or failing to render, professional services in the treatment or care of patients by hospitals and their agents and employees or by member physicians.

Source: Laws 1976, LB 809, § 1; Laws 1996, LB 1044, § 243; Laws 2002, LB 1062, § 10; Laws 2007, LB296, § 182.

44-2902 Physicians; mutual insurance association; how incorporated; purpose.

Any ten or more physicians licensed under the Medicine and Surgery Practice Act may incorporate a mutual insurance association to insure member physicians, their professional corporations, partnerships, limited liability companies, agents, and employees against liability arising from rendering or failing to render professional services in the treatment or care of patients.

Source: Laws 1976, LB 809, § 2; Laws 1993, LB 121, § 249; Laws 2007, LB463, § 1137.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

44-2904 Hospital association; qualified to become a member; when; insuring of risks; considerations.

Any hospital, whether within or without the state, shall be qualified to become a member of a hospital association incorporated under sections 44-2901 to 44-2918 if it is licensed either by the Department of Health and Human Services or by the corresponding authority in the state in which the hospital is located, except that no hospital outside of this state may become a member of such an association until one year after March 31, 1976, nor may any risks outside this state be insured under the provisions of sections 44-2901 to 44-2918 until one year after the issuance of a certificate of authority to transact insurance business by the Department of Insurance. All such risks shall be subject to the prior approval of the Director of Insurance.

In determining whether or not to grant approval for the insuring of risks outside of Nebraska, the Director of Insurance shall consider the following: (1) Limits of indemnity; (2) past and present loss experience of the hospital to be insured; (3) statutes, court decisions, and the insurance climate of the jurisdiction in which the risk is located; and (4) such other information as the director may deem relevant.

Source: Laws 1976, LB 809, § 4; Laws 1996, LB 1044, § 244; Laws 2007, LB296, § 183.

ARTICLE 32

HEALTH MAINTENANCE ORGANIZATIONS

Section

Section
44-32,180. Taxation.

44-32,106 Health maintenance organization producer, defined.

Health maintenance organization producer shall mean a person licensed under subdivision (1)(b) of section 44-4054 who solicits, negotiates, effects, procures, delivers, renews, or continues a policy or contract for health maintenance organization membership, or who takes or transmits a membership fee or premium for such a policy or contract, other than for himself or herself, or who advertises or otherwise holds himself or herself out to the public as such.

Source: Laws 1990, LB 1136, § 15; Laws 2008, LB855, § 20.

44-32,119 Application; transmittal to Department of Health and Human Services; duties.

(1) Upon receipt of an application for issuance of a certificate of authority, the Director of Insurance shall forthwith transmit copies of such application and accompanying documents to the Department of Health and Human Services.

(2) The Department of Health and Human Services shall determine whether the applicant has complied with sections 44-32,126 to 44-32,128 with respect to health care services to be furnished.

(3) Within forty-five days of receipt of the application for issuance of a certificate of authority, the Department of Health and Human Services shall certify to the Director of Insurance that the proposed health maintenance organization meets the requirements of such sections or notify the Director of Insurance that the health maintenance organization does not meet such requirements and specify in what respects it is deficient.

Source: Laws 1990, LB 1136, § 28; Laws 1996, LB 1044, § 245; Laws 2007, LB296, § 184.

44-32,120 Certificate of authority; issuance; conditions.

The Director of Insurance shall, within forty-five days of receipt of certification or notice of deficiencies pursuant to section 44-32,119, issue a certificate of authority to any person filing a completed application upon receiving the prescribed fees and being satisfied that:

(1) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and possess good reputations;

(2) Any deficiencies identified by the Department of Health and Human Services have been corrected and the department has certified to the Director of Insurance that the health maintenance organization's proposed plan of operation meets the requirements of sections 44-32,126 to 44-32,128;

(3) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments or deductibles; and

(4) The health maintenance organization is in compliance with sections 44-32,138 to 44-32,148.

A certificate of authority shall be denied only after the Director of Insurance complies with the requirements of section 44-32,153.

Source: Laws 1990, LB 1136, § 29; Laws 1996, LB 1044, § 246; Laws 2007, LB296, § 185.

44-32,127 Quality assurance program; requirements.

Each health maintenance organization shall have an ongoing, internal quality assurance program to monitor and evaluate its health care services, including primary and specialist physician services, and ancillary and preventive health care services across all institutional and noninstitutional settings. The quality assurance program shall include, but not be limited to, the following:

(1) A written statement of goals and objectives which emphasizes improved health status in evaluating the quality of care rendered to enrollees;

(2) A written quality assurance plan which describes the following:

(a) The health maintenance organization's scope and purpose in quality assurance;

(b) The organizational structure responsible for quality assurance activities;

(c) Contractual arrangements, when appropriate, for delegation of quality assurance activities;

(d) Confidentiality policies and procedures;

(e) A system of ongoing evaluation activities;

(f) A system of focused evaluation activities;

(g) A system for credentialing providers and performing peer review activities; and

(h) Duties and responsibilities of the designated physician responsible for the quality assurance activities;

(3) A written statement describing the system of ongoing quality assurance activities, including, but not limited to, the following:

(a) Problem assessment, identification, selection, and study;

(b) Corrective action, monitoring, evaluation, and reassessment; and

(c) Interpretation and analysis of patterns of care rendered to individual patients by individual providers;

(4) A written statement describing the system of focused quality assurance activities based on representative samples of the enrolled population which identifies method of topic selection, study, data collection, analysis, interpretation, and report format; and

(5) A written plan for taking appropriate corrective action whenever, as determined by the quality assurance program, inappropriate or substandard services have been provided or services which should have been furnished have not been provided.

Each health maintenance organization shall record proceedings of formal quality assurance program activities and maintain documentation in a confidential manner. Quality assurance program minutes shall be available to the Department of Health and Human Services. Each health maintenance organization shall also establish a mechanism for periodic reporting of quality

assurance program activities to the governing body of the health maintenance organization, the providers, and appropriate staff.

Source: Laws 1990, LB 1136, § 36; Laws 1996, LB 1044, § 247; Laws 2007, LB296, § 186.

44-32,128 Patient record system; requirements.

Each health maintenance organization shall ensure the use and maintenance of an adequate patient record system which facilitates documentation and retrieval of clinical information for the purpose of the health maintenance organization evaluating continuity and coordination of patient care and assessing the quality of health and medical care provided to enrollees. Enrollee clinical records shall be available to the Department of Health and Human Services or an authorized designee for examination and review to ascertain compliance with section 44-32,127 or as deemed necessary by the department.

Source: Laws 1990, LB 1136, § 37; Laws 1996, LB 1044, § 248; Laws 2007, LB296, § 187.

44-32,134 Filings; required.

(1) Every health maintenance organization shall file annually, on or before March 1, an annual financial statement with the Director of Insurance, with a copy to the Department of Health and Human Services, covering the preceding calendar year. The annual financial statement shall be on forms prescribed by the Director of Insurance and shall be prepared in accordance with annual statement instructions and accounting practices and procedures manuals as prescribed by the director which conform substantially to the annual statement instructions and the Accounting Practices and Procedures Manuals of the National Association of Insurance Commissioners.

(2) Every health maintenance organization shall file annually, on or before March 1, with the Director of Insurance, with a copy to the department:

(a) A list of the providers who have executed a contract that complies with section 44-32,141; and

(b) A description of the grievance procedures, the total number of grievances handled through such procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances.

(3) Every health maintenance organization shall file annually, on or before June 1, audited financial statements with the Director of Insurance, with a copy to the department.

(4) The Director of Insurance may require such additional reports as are deemed necessary and appropriate to carry out his or her duties under the Health Maintenance Organization Act.

Source: Laws 1990, LB 1136, § 43; Laws 1996, LB 1044, § 249; Laws 2000, LB 930, § 9; Laws 2007, LB296, § 188.

44-32,136 Grievance procedure.

Each health maintenance organization shall establish and maintain a grievance procedure to provide for the resolution of grievances initiated by enrollees. The procedure shall be approved by the Director of Insurance after consultation with the Department of Health and Human Services. The Director of Insurance or the department may examine the grievance procedure. The

health maintenance organization shall maintain records regarding grievances received since the date of the last examination.

Source: Laws 1990, LB 1136, § 45; Laws 1996, LB 1044, § 250; Laws 2007, LB296, § 189.

44-32,152 Examinations; expenses.

(1) The Director of Insurance may make an examination of the affairs of any health maintenance organization in accordance with the Insurers Examination Act and any provider with whom such health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state. The Department of Health and Human Services may make an examination concerning the quality assurance program of any health maintenance organization and any provider with whom such health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

(2) Every health maintenance organization and provider shall submit its books and records for an examination and in every way facilitate the completion of the examination. For the purpose of an examination, the Director of Insurance and the Department of Health and Human Services may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of a provider concerning the business. An examination shall not involve the confidential communications between physicians and patients.

(3) The expenses of an examination shall be assessed against the health maintenance organization being examined and remitted to the Director of Insurance or the Department of Health and Human Services for whom the examination is being conducted in the manner provided in the Insurers Examination Act.

(4) In lieu of an examination, the Director of Insurance or the Department of Health and Human Services may accept the report of an examination made by the insurance commissioner, insurance director, insurance superintendent, or equivalent official or director of health or equivalent official of another state.

Source: Laws 1990, LB 1136, § 61; Laws 1993, LB 583, § 90; Laws 1996, LB 1044, § 251; Laws 2007, LB296, § 190.

Cross References

Insurers Examination Act, see section 44-5901.

44-32,153 Certificate of authority; suspension, revocation, or denial; grounds.

If the Director of Insurance finds that any of the conditions listed in this section exist, any certificate of authority issued under the Health Maintenance Organization Act may be suspended or revoked or any application for a certificate of authority may be denied:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under section 44-32,117 unless

amendments to such submissions have been filed with and approved by the director;

(2) The health maintenance organization issues an evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of sections 44-32,129 to 44-32,133 and 44-32,149;

(3) The health maintenance organization does not provide or arrange for basic health care services;

(4) The Department of Health and Human Services certifies to the Director of Insurance that:

(a) The health maintenance organization does not meet the requirements of subsection (2) of section 44-32,119; or

(b) The health maintenance organization is unable to fulfill its obligations to furnish health care services;

(5) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(6) The health maintenance organization has failed to correct, within the time prescribed by section 44-32,154, any deficiency occurring due to such health maintenance organization's prescribed minimum net worth being impaired;

(7) The health maintenance organization has failed to implement grievance procedures in a reasonable manner to resolve valid complaints;

(8) The health maintenance organization or any person on its behalf has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(9) The continued operation of the health maintenance organization would be hazardous to its enrollees; or

(10) The health maintenance organization has otherwise failed substantially to comply with the act.

Source: Laws 1990, LB 1136, § 62; Laws 1996, LB 1044, § 252; Laws 2007, LB296, § 191.

44-32,156 Suspension, revocation, denial, or administrative penalty; order; hearing.

Suspension or revocation of a certificate of authority, the denial of an application for a certificate, or the imposition of an administrative penalty shall be by written order and shall be sent by the Director of Insurance to the health maintenance organization or applicant by certified or registered mail and to the Department of Health and Human Services. The written order shall state the grounds, charges, or conduct on which the suspension, revocation, denial, or administrative penalty is based. The health maintenance organization or applicant may in writing request a hearing within thirty days from the date of mailing of the order. If no written request is made, such order shall be final upon the expiration of thirty days.

Source: Laws 1990, LB 1136, § 65; Laws 1996, LB 1044, § 253; Laws 2007, LB296, § 192.

44-32,157 Hearing; notice; decision; appeal.

(1) If the health maintenance organization or applicant requests a hearing pursuant to section 44-32,156, the Director of Insurance shall issue a written notice of hearing and send it to the health maintenance organization or applicant by certified or registered mail and to the Department of Health and Human Services stating:

(a) A specific time for the hearing, which may not be less than twenty nor more than thirty days after mailing of the notice of hearing; and

(b) A specific place for the hearing, which may be either in Lancaster County or in the county where the health maintenance organization's or applicant's principal place of business is located.

(2) If a hearing is requested, the chief executive officer of the Department of Health and Human Services or his or her designated representative shall be in attendance and shall participate in the proceedings. The recommendations and findings of the chief executive officer with respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority shall be conclusive and binding upon the Director of Insurance.

(3) After the hearing or upon failure of the health maintenance organization to appear at such hearing, the Director of Insurance shall take whatever action he or she deems necessary based on written findings and shall mail his or her decision to the health maintenance organization or applicant with a copy to the Department of Health and Human Services. The action of the Director of Insurance and the recommendation and findings of the chief executive officer may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The act shall apply to proceedings under this section to the extent it is not in conflict with this section.

Source: Laws 1990, LB 1136, § 66; Laws 1996, LB 1044, § 254; Laws 2007, LB296, § 193.

Cross References

Administrative Procedure Act, see section 84-920.

44-32,163 Fees; distribution.

Every health maintenance organization subject to the Health Maintenance Organization Act shall pay to the director the following fees:

(1) For filing an application for a certificate of authority or amendment thereto, three hundred dollars;

(2) For filing an amendment to the organizational documents that requires approval, twenty dollars;

(3) For filing each annual report, two hundred dollars; and

(4) For renewing a certificate of authority, one hundred dollars.

Fees charged under this section shall be distributed one-half to the Director of Insurance and one-half to the Department of Health and Human Services. All fees or other assessments transmitted to the Department of Health and Human Services pursuant to the act shall be remitted to the state treasury for credit to the Health and Human Services Cash Fund. There shall be appropriated from money credited to the fund pursuant to this section such amounts as

are available to pay expenses considered incident to the administration of the act.

Source: Laws 1990, LB 1136, § 72; Laws 1991, LB 703, § 12; Laws 1996, LB 1044, § 255; Laws 2007, LB296, § 194.

44-32,165 Violations; conference; requirements.

If the Director of Insurance or the Department of Health and Human Services has for any reason cause to believe that any violation of the Health Maintenance Organization Act has occurred or is threatened, the Director of Insurance or the Department of Health and Human Services may give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in such suspected violation to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation and, if it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation. Proceedings under this section shall not be governed by any formal procedural requirements and may be conducted in such manner as the Director of Insurance or the Department of Health and Human Services deems appropriate under the circumstances. Unless consented to by the health maintenance organization, no rule or order may result from a conference until the requirements of this section are satisfied.

Source: Laws 1990, LB 1136, § 74; Laws 1996, LB 1044, § 256; Laws 2007, LB296, § 195.

44-32,170 Practice of medicine; laws not applicable.

Any health maintenance organization authorized under the Health Maintenance Organization Act shall not be deemed to be practicing medicine and shall be exempt from the Medicine and Surgery Practice Act relating to the practice of medicine.

Source: Laws 1990, LB 1136, § 79; Laws 2007, LB463, § 1138.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

44-32,176 Department of Health and Human Services; contracts authorized.

The Department of Health and Human Services, in carrying out obligations under the Health Maintenance Organization Act, may contract with qualified persons to make recommendations concerning the determinations required to be made. Such recommendations may be accepted in full or in part by the department.

Source: Laws 1990, LB 1136, § 85; Laws 1996, LB 1044, § 257; Laws 2007, LB296, § 196.

44-32,180 Taxation.

(1) Any health maintenance organization subject to the Health Maintenance Organization Act shall also be subject to (a) the premium taxation provisions of Chapter 77, article 9, to the extent that the direct writing premiums are not otherwise subject to taxation under such article and (b) the retaliatory taxation provisions of section 44-150.

(2) Any capitation payment made in accordance with the Medical Assistance Act shall be excluded from computation of any tax obligation imposed by subsection (1) of this section.

Source: Laws 1990, LB 1136, § 89; Laws 1996, LB 969, § 2; Laws 2002, Second Spec. Sess., LB 9, § 1; Laws 2006, LB 1248, § 60; Laws 2010, LB698, § 1.
Effective date March 4, 2010.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 33

LEGAL SERVICE INSURANCE CORPORATIONS

Section
44-3311. Legal expense insurance policy; possible violations; director; report.

44-3311 Legal expense insurance policy; possible violations; director; report.

The director shall report to the Counsel for Discipline of the Nebraska Supreme Court any information of possible instances of overcharging for legal services, incompetence, or violations of the Nebraska Rules of Professional Conduct by lawyers who provide services in connection with a legal expense insurance policy.

Source: Laws 1979, LB 52, § 11; Laws 2004, LB 1207, § 44; Laws 2006, LB 1115, § 35.

ARTICLE 35

SERVICE CONTRACTS

(b) MOTOR VEHICLES

Section
44-3521. Terms, defined.
44-3522. Motor vehicle service contract; requirements.
44-3523. Motor vehicle service contract reimbursement insurance policy; requirements.
44-3526. Act; exemptions.

(b) MOTOR VEHICLES

44-3521 Terms, defined.

For purposes of the Motor Vehicle Service Contract Reimbursement Insurance Act:

(1) Director means the Director of Insurance;

(2) Mechanical breakdown insurance means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear and that is issued by an insurance company authorized to do business in this state;

(3) Motor vehicle means any motor vehicle as defined in section 60-339;

(4) Motor vehicle service contract means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle

that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear but does not include mechanical breakdown insurance;

(5) Motor vehicle service contract provider means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract, except that motor vehicle service contract provider does not include an insurer as defined in section 44-103;

(6) Motor vehicle service contract reimbursement insurance policy means a policy of insurance meeting the requirements in section 44-3523 that provides coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider; and

(7) Service contract holder means a person who purchases a motor vehicle service contract.

Source: Laws 1990, LB 1136, § 93; Laws 2005, LB 274, § 230; Laws 2006, LB 875, § 4.

44-3522 Motor vehicle service contract; requirements.

No motor vehicle service contract shall be issued, sold, or offered for sale in this state unless:

(1) The motor vehicle service contract provider is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state;

(2) True and correct copies of the motor vehicle service contract and the motor vehicle service contract reimbursement insurance policy have been filed with the director; and

(3) The contract conspicuously states:

(a) That the obligations of the motor vehicle service contract provider to the service contract holder are covered under the motor vehicle service contract reimbursement insurance policy; and

(b) The name and address of the issuer of the motor vehicle service contract reimbursement insurance policy.

Source: Laws 1990, LB 1136, § 94; Laws 2006, LB 875, § 5; Laws 2007, LB188, § 1.

44-3523 Motor vehicle service contract reimbursement insurance policy; requirements.

(1) No motor vehicle service contract reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy conspicuously states that the insurer will pay on behalf of the motor vehicle service contract provider all sums which the provider is legally obligated to pay in the performance of its contractual obligations under the motor vehicle service contracts issued or sold by the provider.

(2) The motor vehicle service contract reimbursement insurance policy shall completely and fully reimburse the motor vehicle service contract provider for all repair costs incurred under the motor vehicle service contract from the first dollar of coverage. The motor vehicle service contract reimbursement insur-

ance policy shall not require or allow a motor vehicle service contract provider to assume any portion of direct or first-dollar liability for repairs under a motor vehicle service contract. The motor vehicle service contract reimbursement insurance policy shall not include any provision whereby the insurer provides coverage in excess of reserves held by the motor vehicle service contract provider or only in the event of the motor vehicle service contract provider's insolvency or default. All unearned premium reserves and claim reserve funds shall be established as liabilities on the books of the insurer in accordance with statutory accounting practices. This subsection shall not apply to programs directly obligating an automobile dealer to perform under the motor vehicle service contract.

Source: Laws 1990, LB 1136, § 95; Laws 2006, LB 875, § 6.

44-3526 Act; exemptions.

The Motor Vehicle Service Contract Reimbursement Insurance Act shall not apply to motor vehicle service contracts (1)(a) issued by a motor vehicle manufacturer or importer for the motor vehicles manufactured or imported by that manufacturer or importer and (b) sold by a franchised motor vehicle dealer licensed pursuant to the Motor Vehicle Industry Regulation Act or (2) issued and sold directly by a motor vehicle manufacturer or importer licensed pursuant to the Motor Vehicle Industry Regulation Act for the motor vehicles manufactured or imported by that manufacturer or importer.

Source: Laws 1990, LB 1136, § 98; Laws 2010, LB816, § 3.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

ARTICLE 38
DENTAL SERVICES

Section

44-3802 Terms, defined.

As used in sections 44-3801 to 44-3826, unless the context otherwise requires:

(1) Director shall mean the Director of Insurance;

(2) Department shall mean the Department of Insurance;

(3) Prepaid dental service plan or plan shall mean a contractual arrangement to provide specified dental services, in consideration of a specified payment for an interval of time, regardless of whether the payment for such services is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost of such services is to be spread directly or indirectly among a group of persons. A prepaid dental service plan includes arrangements that create reasonable expectations of enforceable rights, but does not include the provision of, or reimbursement for, dental services incidental to other insurance coverages; and

(4) Prepaid dental service corporation shall mean a corporation organized under sections 44-3801 to 44-3826 and offering a prepaid dental service plan in this state.

Source: Laws 1982, LB 139, § 2; Laws 2010, LB813, § 1.
Effective date July 15, 2010.

44-3805 Prepaid dental service plan; coverage; contract; certificate; requirements; prohibited acts.

(1) A prepaid dental service plan may be offered on an individual or group basis. Each person covered under a group contract shall be issued a certificate of coverage.

(2) No contract or certificate for dental service may be issued in this state unless a copy of the form has been filed with and approved by the director.

(3) No prepaid dental service plan offered in this state shall limit any fees charged for services that are not covered by the plan.

Source: Laws 1982, LB 139, § 5; Laws 2010, LB813, § 2.
Effective date July 15, 2010.

ARTICLE 39

EDUCATION

(a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

Section
44-3901. Continuing education; purpose.
44-3902. Terms, defined.
44-3904. Licensee; requirements; furnish evidence of continuing education.

(b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS

44-3909. Prelicensing education requirements.
44-3910. Prelicensing education requirements; exemptions.
44-3911. Prelicensing education requirements; certificate of completion; filing.

(a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

44-3901 Continuing education; purpose.

The purpose of sections 44-3901 to 44-3908 is to establish requirements for continuing education of insurance producers and consultants who are licensed in order to maintain and improve the quality of insurance services provided to the public.

Source: Laws 1982, LB 274, § 1; Laws 2008, LB855, § 21.

44-3902 Terms, defined.

For purposes of sections 44-3901 to 44-3908, unless the context otherwise requires:

(1) Licensee shall mean a natural person who is licensed by the department as a resident insurance producer or consultant;

(2) Director shall mean the Director of Insurance;

(3) Department shall mean the Department of Insurance; and

(4) Two-year period shall mean the period commencing on the date of licensing and ending on the date of expiration of the licensee's first license

effective for not less than two years and each succeeding twenty-four-month period.

Source: Laws 1982, LB 274, § 2; Laws 1989, LB 92, § 242; Laws 1999, LB 260, § 4; Laws 2008, LB855, § 22.

44-3904 Licensee; requirements; furnish evidence of continuing education.

(1)(a)(i) Licensees qualified to solicit property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty, or personal lines property and casualty insurance shall be required to complete six hours of approved continuing education activities for each line of insurance, including each miscellaneous line, in which he or she is licensed in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty, or personal lines property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2010.

(ii) Licensees qualified to solicit only crop insurance shall be required to complete three hours of approved continuing education activities in each two-year period.

(iii) Licensees qualified to solicit any lines of insurance other than those described in subdivisions (i) and (ii) of subdivision (a) of this subsection shall be required to complete six hours of approved continuing education activities in each two-year period for each line of insurance, including each miscellaneous line, in which he or she is licensed. Licensees qualified to solicit variable life and variable annuity products shall not be required to complete additional continuing education activities because the licensee is qualified to solicit variable life and variable annuity products.

(b) Licensees who are not insurance producers shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2000.

(c) In each two-year period, every licensee shall furnish evidence to the director that he or she has satisfactorily completed the hours of approved continuing education activities required under this subsection for each line of insurance in which he or she is licensed as a resident insurance producer, except that no licensee shall be required to complete more than twenty-four cumulative hours required under this subsection in any two-year period commencing on or after January 1, 2000.

(d) A licensee shall not repeat a continuing education activity for credit within a two-year period.

(2) In each two-year period, licensees required to complete approved continuing education activities under subsection (1) of this section shall, in addition to such activities, be required to complete three hours of approved continuing education activities on insurance industry ethics.

(3) When the requirements of this section have been met, the licensee shall furnish to the department evidence of completion for the current two-year period.

Source: Laws 1982, LB 274, § 4; Laws 1985, LB 48, § 2; Laws 1988, LB 1114, § 1; Laws 1989, LB 92, § 244; Laws 1989, LB 279, § 4; Laws 1993, LB 583, § 91; Laws 1994, LB 978, § 29; Laws 1999, LB 260, § 5; Laws 2008, LB855, § 23.

(b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS

44-3909 Prelicensing education requirements.

Except as otherwise provided by the Insurance Producers Licensing Act, no individual shall be eligible to apply for a license as an insurance producer unless he or she has completed the following prelicensing education requirements:

(1) An individual seeking a qualification for a license in the life insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of life insurance;

(2) An individual seeking a qualification for a license in the accident and health or sickness insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of accident and health or sickness insurance;

(3) An individual seeking a qualification for a license in the property insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of property insurance;

(4) An individual seeking a qualification for a license in the casualty insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of casualty insurance;

(5) An individual seeking a qualification for a license in the personal lines property and casualty insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of personal lines property and casualty insurance;

(6) An individual seeking a qualification for a license in the title insurance line shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of title insurance; and

(7) An individual seeking a qualification for a license in the crop insurance line shall complete at least three hours of education on insurance industry ethics in addition to three hours of education in the area of crop insurance.

Source: Laws 1993, LB 583, § 95; Laws 1999, LB 260, § 7; R.S.1943, (1998), § 44-4005.01; Laws 2001, LB 51, § 29; Laws 2008, LB855, § 24.

Cross References

Insurance Producers Licensing Act, see section 44-4047.

44-3910 Prelicensing education requirements; exemptions.

The prelicensing education requirements of section 44-3909 shall not apply to an individual who, at the time of application for an insurance producer license:

(1) Is applying for qualification for the life insurance line of authority and has the certified employee benefit specialist designation, the chartered financial consultant designation, the certified insurance counselor designation, the certified financial planner designation, the chartered life underwriter designation, the fellow life management institute designation, or the Life Underwriter Training Council fellow designation;

(2) Is applying for qualification for the accident and health or sickness insurance line of authority and has the registered health underwriter designation, the certified employee benefit specialist designation, the registered employee benefit consultant designation, or the health insurance associate designation;

(3) Is applying for qualification for the property insurance, casualty insurance, or personal lines property and casualty insurance line of authority and has the accredited advisor in insurance designation, the associate in risk management designation, the certified insurance counselor designation, or the chartered property and casualty underwriter designation;

(4) Has a college degree with a concentration in insurance from an accredited educational institution;

(5) Is an individual described in section 44-4056 or 44-4058; or

(6) Is a person who the director may exempt pursuant to a rule or regulation adopted and promulgated pursuant to the Administrative Procedure Act.

Source: Laws 1993, LB 583, § 96; R.S.1943, (1998), § 44-4005.02; Laws 2001, LB 51, § 30; Laws 2008, LB855, § 25.

Cross References

Administrative Procedure Act, see section 84-920.

44-3911 Prelicensing education requirements; certificate of completion; filing.

A certificate of completion of the prelicensing education requirements shall be filed with the director.

Source: Laws 1993, LB 583, § 97; R.S.1943, (1998), § 44-4005.03; Laws 2001, LB 51, § 31; Laws 2008, LB855, § 26.

ARTICLE 40

INSURANCE PRODUCERS LICENSING ACT

Section
44-4064. Fees.
44-4065. Reports.

44-4064 Fees.

(1) Before any license or appointment is issued or renewed under the Insurance Producers Licensing Act or before any appointment is terminated, the person requesting such license shall pay or cause to be paid to the director the following fee or fees, if applicable, as established by the director:

(a) For each insurance producer license, a fee not to exceed one hundred dollars;

(b) For each annual appointment, a fee not to exceed ten dollars;

(c) For each termination of an appointment, a fee not to exceed ten dollars;

(d) A late renewal fee not to exceed one hundred twenty-five dollars;

(e) A reinstatement fee not to exceed one hundred seventy-five dollars; and

(f) For each business entity license, a fee not to exceed fifty dollars.

(2) If a licensed person (a) desires to add a line or lines of insurance to his or her existing license, (b) seeks to change any other information contained in the license for any reason, or (c) applies for a duplicate license, such person shall pay to the director a fee established by the director to cover the expense of replacing the license.

(3) The director shall not prorate fees imposed pursuant to subsection (1) of this section and shall not refund fees to any person in the event of a license denial. The director may refund fees paid pursuant to this section if the payment has been made in error.

Source: Laws 2001, LB 51, § 18; Laws 2008, LB855, § 27.

44-4065 Reports.

(1) An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction, by a professional self-regulatory organization such as the Financial Industry Regulatory Authority or a similar organization, or by another governmental agency within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(2) An insurance producer shall report to the director any obligation regarding insurance premiums or fiduciary funds owed to a company, including a premium finance company, or a managing general agent within thirty days of the date of discharge or attempt to discharge such obligation in a personal or organizational bankruptcy proceeding.

(3) Within thirty days of the date of arraignment or date of waiver of arraignment, if waived, an insurance producer shall report to the director any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

(4) For purposes of this section, administrative action shall include, but not be limited to, any arbitration or mediation award, disciplinary action, civil action, or sanction taken against or involving an insurance producer.

Source: Laws 2001, LB 51, § 19; Laws 2009, LB192, § 3.

ARTICLE 41
PREFERRED PROVIDERS

Section

44-4109.01 Policies or contracts; requirements.

Policies or contracts authorized by sections 44-4109 and 44-4110 are subject to the following requirements:

(1) A prospective insured shall be provided information about the terms and conditions of the insurance arrangement to enable him or her to make an

informed decision about accepting a system of health care delivery. If the insurance arrangement is described orally to a prospective insured, the description shall use easily understood, truthful, and objective terms. All written descriptions shall be in a readable and understandable format. Specific items that shall be included are:

(a) Coverage provisions, benefits, and any exclusions by category of service, provider, or physician and, if applicable, by specific service;

(b) Any prior authorization or other review requirements, including preauthorization review, concurrent review, postservice review, and postpayment review, the manner in which an insured may obtain review of a denial of coverage, and the nature of any liability an insured may incur if the insured does not comply with the authorization requirements of the policy, contract, certificate, or other materials; and

(c) Information on the insured's financial responsibility for payment for deductibles, coinsurance, or other noncovered services;

(2) If an insurer conducts customer satisfaction surveys concerning an insurance arrangement, the results of such surveys shall be made available upon request to existing and prospective participants in insurance arrangements;

(3) The policy, contract, certificate, or other materials shall establish a mechanism by which a committee of preferred providers will be involved in reviewing and advising the insurance arrangement about medical policy, including coverage of new technology and procedures, quality and credentialing criteria, and medical management procedures;

(4) All policies or contracts shall have a system for credentialing participating preferred providers and shall allow all providers within the insurance arrangement's geographic service area to apply for such credentials periodically and not less than annually. The credentialing process:

(a) Shall begin upon application of a provider for inclusion in the policy or contract; and

(b) Shall be based solely on quality, accessibility, or economic considerations and shall be applied in accordance with reasonable business judgment.

Credentialing standards or criteria shall be made available, upon request, to providers and insureds;

(5) If the policy or contract is with an organized delivery system formed by insurers, hospitals, physicians, or allied health professionals, or a combination of such entities, participation by a provider may be limited to a participant in the organized delivery system or to providers having staff privileges at a particular health care facility;

(6) If an insurer or a participant in an insurance arrangement refuses to contract with a provider, the provider shall be permitted to appeal the adverse decision. A person conducting the provider-appeal procedure may be employed by the insurer or participant in an insurance arrangement if the person does not initially participate in the decision to take adverse action against the provider. The provider-appeal procedure shall include, but not be limited to, notice of the date and time of the hearing, a statement of the criteria or standards on which the decision was based, an opportunity for the provider to review information upon which the adverse decision was based, an opportunity

for the provider to appear personally at the hearing and present any additional information, and a timely decision on the appeal;

(7) If the insurer or participant in an insurance arrangement excludes or fails to retain a provider previously contracted with to provide health care services, the provider shall be permitted to appeal the adverse decision in the same manner as set forth in subdivision (6) of this section. If the provider disagrees with the decision, the provider shall be permitted to appeal to an appeals committee consisting of one person selected by each party to the appeal and one person mutually agreeable to both parties. The parties to the appeal shall pay to the appeal committee any costs associated with the person they select and shall share the costs of the person mutually agreeable to both parties, which costs shall not be recoverable by the other party;

(8) Prior to initiation of a proceeding to terminate a provider's participation, the provider shall be given an opportunity to enter into and complete a corrective action plan, except in cases of fraud or imminent harm to patient health or when the provider's ability to provide services has been restricted by an action, including probation or any compliance agreements, by the Department of Health and Human Services or other governmental agency; and

(9) Policies and contracts shall not exclude providers with practices containing a substantial number of patients having severe or expensive medical conditions, except that this section shall not prohibit plans from excluding providers who fail to meet the insurance arrangement's criteria for quality, accessibility, or economic considerations.

Source: Laws 1995, LB 473, § 4; Laws 1996, LB 1044, § 258; Laws 2007, LB296, § 197.

44-4110 Development of preferred provider organizations; conditions.

All providers of health services in Nebraska may develop preferred provider organizations and contract with insurers and participants in insurance arrangements if such providers have met all licensure and certification requirements necessary to practice a specific profession or to operate a specific health care facility pursuant to the Health Care Facility Licensure Act and the Uniform Credentialing Act. An organization of preferred providers may limit itself to one or more specific professions or specialties within a profession, as defined in the Uniform Credentialing Act, and may limit the number of participating providers to that required to adequately meet the need for its particular program and the purpose of sections 44-4101 to 44-4113 to furnish health services in a manner reasonably expected to contain or lower costs.

Source: Laws 1984, LB 902, § 10; Laws 1995, LB 473, § 6; Laws 2007, LB463, § 1139.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

ARTICLE 42
COMPREHENSIVE HEALTH INSURANCE POOL ACT

Section

44-4201 Act, how cited.

Sections 44-4201 to 44-4235 shall be known and may be cited as the Comprehensive Health Insurance Pool Act.

Source: Laws 1985, LB 391, § 1; Laws 1997, LB 862, § 20; Laws 2001, LB 360, § 20; Laws 2004, LB 1047, § 9; Laws 2009, LB358, § 1.

44-4220.01 Review of operation; report.

Following the close of each calendar year, the board shall conduct a review of the operation of the pool and report to the director the board's recommendations for cost savings in the operation of the pool.

Source: Laws 2009, LB358, § 2.

44-4220.02 Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.

(1)(a) In addition to the requirements of section 44-4220.01, following the close of each calendar year, the board shall conduct a review of health care provider reimbursement rates for benefits payable under pool coverage for covered services. The board shall report to the director the results of the review within thirty days after the completion of the review.

(b) The review required by this section shall include a determination of whether (i) health care provider reimbursement rates for benefits payable under pool coverage for covered services are in excess of reasonable amounts and (ii) cost savings in the operation of the pool could be achieved by establishing the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(c) In the determination pursuant to subdivision (1)(b)(i) of this section, the board shall consider:

(i) The success of any efforts by the administering insurer to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services on a voluntary basis;

(ii) The effect of health care provider reimbursement rates for benefits payable under pool coverage for covered services on the number and geographic distribution of health care providers providing covered services to covered individuals;

(iii) The administrative cost of implementing a level of health care provider reimbursement rates for benefits payable under pool coverage for covered services; and

(iv) A filing by the administering insurer which shows the difference, if any, between the aggregate amounts set for health care provider reimbursement rates for benefits payable under pool coverage for covered services by existing contracts between the administering insurer and health care providers and the amounts generally charged to reimburse health care providers prevailing in the commercial market. No such filing shall require the administering insurer to disclose proprietary information regarding health care provider reimbursement rates for specific covered services under pool coverage.

(d) If the board determines that cost savings in the operation of the pool could be achieved, the board shall set forth specific findings supporting the determination and may establish the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(2) A health care provider who provides covered services to a covered individual under pool coverage and requests payment is deemed to have agreed to reimbursement according to the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. Any reimbursement paid to a health care provider for providing covered services to a covered person under pool coverage is limited to the lesser of billed charges or the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. A health care provider shall not collect or attempt to collect from a covered individual any money owed to the health care provider by the pool. A health care provider shall not have any recourse against a covered individual for any covered services under pool coverage in excess of the copayment, coinsurance, or deductible amounts specified in the pool coverage. Nothing in this section shall prohibit a health care provider from billing a covered individual under pool coverage for services which are not covered services under pool coverage.

Source: Laws 2009, LB358, § 3.

44-4221 Purchase pool coverage; eligibility.

(1) To be eligible to purchase pool coverage, an individual shall:

(a) Be a resident of the state for a period of at least six months and shall be an individual:

(i) Who is not eligible for coverage under a group health plan comparable to pool coverage, medicare by reason of age, or medical assistance pursuant to the Medical Assistance Act or section 43-522, or any successor program, and who does not have any other health insurance coverage comparable to pool coverage;

(ii) Who, if such individual was offered the option of continuation coverage under COBRA or under a similar program, both elected such continuation coverage and exhausted such continuation coverage; and

(iii)(A) Who has received, within six months prior to application to the pool, a rejection in writing, for reasons of health, from an insurer for health insurance coverage comparable to pool coverage;

(B) Who currently has, or has been offered within six months prior to application to the pool, health insurance coverage comparable to pool coverage

by an insurer which includes a restrictive rider which limits health insurance coverage for a preexisting medical condition; or

(C) Who has been refused health insurance coverage comparable to pool coverage, or has been offered health insurance coverage at a rate exceeding the premium rate for pool coverage, within six months prior to application to the pool;

(b) Be a resident of the state for any length of time and be an individual:

(i) For whom, as of the date the individual seeks pool coverage under this section, the aggregate of the periods of creditable coverage is eighteen or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(ii) Who is not eligible for coverage under a group health plan, medicare, or medical assistance pursuant to the Medical Assistance Act or section 43-522, or any successor program, and who does not have any other health insurance coverage;

(iii) With respect to whom the most recent prior creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud; and

(iv) Who, if such individual was offered the option of continuation coverage under COBRA or under a similar program, both elected such continuation coverage and exhausted such continuation coverage; or

(c) Be a resident of the state for any length of time and be a qualified trade adjustment assistance eligible individual.

(2) The board may adopt and promulgate a list of medical or health conditions for which an individual would be eligible for pool coverage without applying for health insurance coverage pursuant to subdivision (1)(a) of this section. Individuals who can demonstrate the existence or history of any medical or health conditions on the list adopted and promulgated by the board shall be eligible to apply directly to the pool for pool coverage.

Source: Laws 1985, LB 391, § 21; Laws 1992, LB 1006, § 35; Laws 1997, LB 862, § 26; Laws 1998, LB 1035, § 7; Laws 1998, LB 1063, § 2; Laws 2000, LB 1253, § 24; Laws 2004, LB 1047, § 12; Laws 2006, LB 1248, § 61; Laws 2009, LB358, § 4.

Cross References

Medical Assistance Act, see section 68-901.

44-4222 Purchase of pool coverage; ineligibility.

(1) An individual shall not be eligible for initial or continued pool coverage if:

(a) He or she is eligible for medicare benefits by reason of age or medical assistance established pursuant to the Medical Assistance Act;

(b) He or she is a resident or inmate of a correctional facility, except that this subdivision shall not apply if such individual is eligible for pool coverage under subdivision (1)(b) of section 44-4221;

(c) He or she has terminated pool coverage unless twelve months have elapsed since such termination, except that this subdivision shall not apply if such individual has received and become ineligible for medical assistance pursuant to the Medical Assistance Act during the immediately preceding twelve months, if such individual is eligible for pool coverage under subdivision

(1)(b) of section 44-4221, or if such individual is eligible for waiver of any waiting period or preexisting condition exclusions pursuant to section 44-4228;

(d) The pool has paid out one million dollars in claims for the individual;

(e) He or she is no longer a resident of Nebraska; or

(f) The premium for his or her pool coverage is paid for by a person other than the following:

(i) The individual;

(ii) An individual related to the individual by blood, marriage, or adoption; or

(iii) An entity operating under the federal Ryan White HIV/AIDS Treatment Modernization Act of 2006, Public Law 109-415, as such act existed on August 30, 2009.

(2) Pool coverage shall terminate for any individual on the date the individual becomes ineligible under subsection (1) of this section.

Source: Laws 1985, LB 391, § 22; Laws 1987, LB 319, § 2; Laws 1989, LB 279, § 8; Laws 1990, LB 1136, § 106; Laws 1992, LB 1006, § 36; Laws 1997, LB 862, § 27; Laws 1998, LB 1035, § 8; Laws 2000, LB 1253, § 25; Laws 2006, LB 1248, § 62; Laws 2009, LB358, § 5.

Cross References

Medical Assistance Act, see section 68-901.

44-4222.01 Insurer, agent, broker, or third-party administrator; prohibited acts; violation; unfair trade practice.

(1) No insurer, agent, broker, or third-party administrator shall refer an individual employee to the pool or arrange for an individual employee to apply for pool coverage for the purpose of separating that individual employee from group health insurance coverage in connection with the individual employee's employment.

(2) Any violation of this section shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Source: Laws 2009, LB358, § 6.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-4226 Major medical expense coverage required; considerations.

(1) The pool shall offer major medical expense coverage to every eligible individual. The pool coverage, its schedule of benefits, and exclusions and other limitations shall be established through rules and regulations adopted and promulgated by the director taking into consideration the advice and recommendations of the members.

(2) In establishing the pool coverage, the director shall take into consideration the levels of individual health insurance coverage provided in the state and such medical economic factors as may be deemed appropriate and shall determine benefit levels, deductibles, coinsurance and stop-loss factors, exclusions, and limitations determined to be generally reflective of and commensurate with individual health insurance coverage provided by the ten insurers writing the largest amount of individual health insurance coverage in the state.

(3) Pool coverage established under this section shall provide both an appropriate high and low deductible to be selected by the pool applicant. The deductibles and coinsurance and stop-loss factors may be adjusted annually according to the medical component of the Consumer Price Index.

Source: Laws 1985, LB 391, § 26; Laws 1992, LB 1006, § 39; Laws 2000, LB 1253, § 28; Laws 2009, LB358, § 7.

44-4227 Premium and standard risk rates; how determined.

(1)(a) For calendar years prior to January 1, 2010, rates and rate schedules may be adjusted for appropriate risk factors such as age, sex, and area variation in claim costs in accordance with established actuarial and underwriting practices. Special rates shall be provided for children under eighteen years of age.

(b) For calendar years prior to January 1, 2010, the pool, with the assistance of an independent actuary, shall determine the standard risk rate by calculating the average individual rate charged by the five insurers writing the largest amount of individual health insurance coverage in the state actuarially adjusted to be comparable with the pool coverage, except that such five insurers shall not include any insurer which has not been writing individual health insurance coverage in this state in at least the three preceding calendar years. The selection of the independent actuary shall be subject to the approval of the director. In the event five insurers do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated risk experience and expenses for such coverage. The annual premium rate established for pool coverage shall be one hundred thirty-five percent of rates established as applicable for individual standard risks, except that the annual premium rate established for pool coverage for children under eighteen years of age shall be sixty-seven and five-tenths percent of rates established as applicable for individual standard risks.

(2)(a) For calendar years beginning on and after January 1, 2010, rates and rate schedules may be adjusted for appropriate risk factors such as age, sex, and area variation in claim costs in accordance with established actuarial and underwriting practices.

(b)(i) For calendar years beginning on and after January 1, 2010, the pool, with the assistance of an independent actuary, shall determine the standard risk rate by calculating the average individual rate charged by the ten insurers writing the largest amount of individual health insurance coverage in the state actuarially adjusted to be comparable with the pool coverage, except that such ten insurers shall not include any insurer which has not been writing individual health insurance coverage in this state in at least the three preceding calendar years. The selection of the independent actuary shall be subject to the approval of the director. In the event ten insurers do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated risk experience and expenses for such coverage.

(ii)(A) The annual premium rate established for pool coverage for calendar year 2010 (I) shall be one hundred forty percent of rates established as applicable for individual standard risks or (II) shall be the rates established as applicable for individual standard risks for the previous calendar year adjusted by a trend factor reflecting medical economic factors as the board deems appropriate, whichever is greater.

(B) The annual premium rate established for pool coverage for calendar year 2011 (I) shall be one hundred forty-five percent of rates established as applicable for individual standard risks or (II) shall be the rates established as applicable for individual standard risks for the previous calendar year adjusted by a trend factor reflecting medical economic factors as the board deems appropriate, whichever is greater.

(C) The annual premium rate established for pool coverage for calendar year 2012 and each calendar year thereafter (I) shall be one hundred fifty percent of rates established as applicable for individual standard risks or (II) shall be the rates established as applicable for individual standard risks for the previous calendar year adjusted by a trend factor reflecting medical economic factors as the board deems appropriate, whichever is greater.

(3) The board shall not adjust or increase pool rates more than one time during any calendar year. All rates and rate schedules shall be submitted to the director for approval. The director shall hold a public hearing pursuant to the Administrative Procedure Act prior to approving an adjustment to or increase in pool rates.

Source: Laws 1985, LB 391, § 27; Laws 1989, LB 279, § 9; Laws 1990, LB 1136, § 107; Laws 1991, LB 419, § 4; Laws 1992, LB 1006, § 40; Laws 1998, LB 1063, § 3; Laws 2000, LB 1253, § 29; Laws 2009, LB358, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

44-4228 Pool coverage; exclusions; application for coverage; requirements.

(1) Pool coverage shall exclude charges or expenses incurred during the first six months following the effective date of pool coverage as to any condition (a) which had manifested itself during the six-month period immediately preceding the effective date of pool coverage in such a manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment or (b) for which medical advice, care, or treatment was recommended or received during the six-month period immediately preceding the effective date of pool coverage.

(2) Any individual whose health coverage is involuntarily terminated on or after January 1, 1992, and who is not eligible for a conversion policy or a continuation-of-coverage policy or contract available under state or federal law may apply for pool coverage but shall submit proof of eligibility pursuant to subdivision (1)(a) of section 44-4221. If such proof is supplied and if pool coverage is applied for under the Comprehensive Health Insurance Pool Act within sixty days after the involuntary termination and if premiums are paid to the pool for the entire coverage period, any waiting period or preexisting condition exclusions provided for under the pool coverage shall be waived to the extent similar exclusions, if any, under the previous health coverage have been satisfied and the effective date of the pool coverage shall be the day following termination of the previous health coverage. The board may assess an additional premium for pool coverage provided pursuant to this subsection notwithstanding the premium limitations stated in section 44-4227. For purposes of this section, an individual whose health coverage is involuntarily terminated means an individual whose health insurance or health plan is terminated by reason of the withdrawal by the insurer from this state, bank-

ruptcy or insolvency of the employer or employer trust fund, or cessation by the employer of providing any group health plan for all of its employees.

(3) Any individual whose health coverage under a continuation-of-coverage policy or contract available under state or federal law terminates or is involuntarily terminated on or after July 1, 1993, for any reasons other than nonpayment of premium may apply for pool coverage but shall submit proof of eligibility applied for within ninety days after the termination or involuntary termination. If premiums are paid to the pool for the entire coverage period, the effective date of the pool coverage shall be the day following termination of the previous coverage under the continuation-of-coverage policy or contract. Any waiting period or preexisting condition exclusions provided for under the pool shall be waived to the extent similar exclusions, if any, under any prior health coverage have been satisfied.

(4) Subsection (1) of this section shall not apply to an individual who has received medical assistance pursuant to the Medical Assistance Act or section 43-522 or an organ transplant recipient terminated from coverage under medicare during the six-month period immediately preceding the effective date of coverage.

(5) All waiting periods and preexisting conditions shall be waived for an individual eligible for pool coverage under subdivision (1)(b) of section 44-4221.

(6) The waiting period and preexisting condition exclusions are waived for a qualified trade adjustment assistance eligible individual under subdivision (1)(c) of section 44-4221 if the individual maintained creditable coverage for an aggregate period of three months as of the date on which the individual seeks to enroll in pool coverage, not counting any period prior to a sixty-three-day break in coverage.

Source: Laws 1985, LB 391, § 28; Laws 1989, LB 279, § 10; Laws 1990, LB 1136, § 108; Laws 1991, LB 419, § 5; Laws 1992, LB 835, § 1; Laws 1994, LB 1222, § 60; Laws 1997, LB 862, § 28; Laws 1998, LB 1035, § 9; Laws 2000, LB 1253, § 30; Laws 2004, LB 1047, § 13; Laws 2006, LB 1248, § 63.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 43

INTERGOVERNMENTAL RISK MANAGEMENT

Section
44-4317. Public agency; tax levy; agreements; authorized.

44-4317 Public agency; tax levy; agreements; authorized.

(1)(a) Any public agency which has the authority to levy a tax shall be authorized to levy a tax, to contract indebtedness, and to issue general obligation bonds payable from such a tax levy to pay the premium costs of general liability insurance, property insurance, workers' compensation insurance, health, dental, or accident insurance, life insurance, and any other insurance to protect against any of the losses described in section 44-4304 and to pay all costs and expenses associated with membership in a risk management pool, including, but not limited to, standard insurance coverages, group self-insur-

ance coverages, assessments levied by the pool, retirement of debt incurred by the pool, and operating expenses of the pool.

(b) A member of a risk management pool which has the authority to levy a tax shall be authorized to enter into agreements obligating the member to make payments beyond its current budget year for any of such purposes.

(c) Taxes levied by a public agency other than an educational service unit or school district for the payment of the principal of, premium of, or interest on such a general obligation bond of such public agency, the payment of such insurance premium costs, and the payment of all costs and expenses associated with membership in a risk management pool may be levied in excess of any tax limitation imposed by statute.

(d) Except as permitted in subdivision (1)(e) of this section, taxes levied by an educational service unit or school district on or after April 3, 2008, for the payment of the principal of, premium of, or interest on such a general obligation bond of such public agency, the payment of such insurance premium costs, and the payment of all costs and expenses associated with membership in a risk management pool shall be subject to the levy limit applicable to such public agency under section 77-3442.

(e) Taxes levied by an educational service unit or school district for the payment of the principal of, premium of, or interest on such a general obligation bond of such educational service unit or school district issued prior to April 3, 2008, shall be excluded from the levy limit applicable to such public agency under section 77-3442.

(2) Nothing in the Intergovernmental Risk Management Act shall be construed or interpreted as permitting the State of Nebraska, represented by the Risk Manager, to enter into any agreement or contract or do any act in contravention of the Constitution of the State of Nebraska.

Source: Laws 1987, LB 398, § 17; Laws 2001, LB 664, § 6; Laws 2008, LB988, § 1.

ARTICLE 45

LONG-TERM CARE INSURANCE ACT

Section

44-4501 Act, how cited.

Sections 44-4501 to 44-4521 shall be known and may be cited as the Long-Term Care Insurance Act.

Source: Laws 1987, LB 416, § 1; Laws 1992, LB 1006, § 44; Laws 1999, LB 323, § 1; Laws 2007, LB117, § 9.

44-4519 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Long-Term Care Insurance Act, including minimum standards for insurance producer training.

Source: Laws 1992, LB 1006, § 53; Laws 2007, LB117, § 11.

44-4521 Sale, solicitation, or negotiation of long-term care insurance; license required; training course; insurer; duties; records.

(1) On or after August 1, 2008, an individual may not sell, solicit, or negotiate long-term care insurance unless the individual is licensed as an insurance producer for health or sickness and accident insurance and has completed a one-time training course and ongoing training every twenty-four months thereafter. All training shall meet the requirements of subsection (2) of this section.

(2) The one-time training course required by subsection (1) of this section shall be no less than eight hours in length, and the required ongoing training shall be no less than four hours in length. All training required under subsection (1) of this section shall consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term insurance partnership programs, including, but not limited to:

(a) State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(b) Available long-term care services and providers;

(c) Changes or improvements in long-term care services or providers;

(d) Alternatives to the purchase of private long-term care insurance;

(e) The effect of inflation on benefits and the importance of inflation protection; and

(f) Consumer suitability standards and guidelines.

Training required by subsection (1) of this section shall not include any sales or marketing information, materials, or training other than those required by state or federal law.

(3)(a) Insurers subject to the Long-Term Care Insurance Act shall obtain verification that the insurance producer receives training required by subsection (1) of this section before a producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance products. Records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(b) Insurers subject to the act shall maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the director to provide assurance to the Department of Health and Human Services that producers have received the training required by subsection (1) of this section and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medicaid, in this state. These records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(4) The satisfaction of the training requirements in any state shall be deemed to satisfy the training requirements of the State of Nebraska.

(5) The training requirements of subsection (1) of this section may be approved as continuing education courses pursuant to sections 44-3901 to 44-3913.

Source: Laws 2007, LB117, § 10; Laws 2008, LB855, § 28.

ARTICLE 47

PREPAID LIMITED HEALTH SERVICE ORGANIZATIONS

44-4726 Taxes.

(1) The same taxes provided for in section 44-32,180 shall be imposed upon each prepaid limited health service organization, and such organizations also shall be entitled to the same tax deductions, reductions, abatements, and credits that health maintenance organizations are entitled to receive.

(2) Any capitation payment made in accordance with the Medical Assistance Act shall be excluded from computation of any tax obligation imposed by subsection (1) of this section.

Source: Laws 1989, LB 320, § 26; Laws 1990, LB 1136, § 110; Laws 1996, LB 969, § 8; Laws 2002, Second Spec. Sess., LB 9, § 2; Laws 2006, LB 1248, § 64; Laws 2010, LB698, § 2.
Effective date March 4, 2010.

Cross References

Managed Care Plan Act, see section 68-1048.
Medical Assistance Act, see section 68-901.

ARTICLE 48

INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION

44-4814 Director; powers and duties.

(1) The director as rehabilitator may appoint one or more special deputies who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the director may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the director, with the approval of the court, and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the director. The director, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. Such committee shall serve at the pleasure of the director and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the director or the court in rehabilitation proceedings conducted under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

(2) The rehabilitator may take such action as he or she deems necessary or appropriate to reform and revitalize the insurer. He or she shall have all the powers of the directors, officers, and managers of the insurer, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He or she shall have full power to direct and manage, to hire and discharge employ-

ees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, he or she may pursue all appropriate legal remedies on behalf of the insurer.

(4)(a)(i) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he or she shall prepare a plan to effect such changes.

(ii) Such plan may include the establishment of a trust to be treated as an insurer with the trustee serving as liquidator under the act retaining all liabilities and assets except the charter and licenses and shall include provisions requiring the rehabilitator to petition the court to convert the rehabilitation proceedings to a liquidation. Such trust shall be considered an insurer for the purposes of the act. Such plan may include provisions for cancellation of all outstanding stock and other securities of, and other equity interests in, the insurer and court approval of the issuance and sale of new stock or other securities for the purpose of transferring to one or more buyers control and ownership of the insurer together with any or all of its licenses and certificates to do business and such other assets as the rehabilitator deems appropriate to the transaction. The proceeds of such sale shall be assets of the trust. The order of the court approving such a sale may provide that the sale is free and clear of all claims and interests of the insurer's insureds, creditors, shareholders, and members and all other persons interested in the insurer and may discharge the insurer and all property which is the subject of the sale from all claims and interests of the insurer's insureds, creditors, shareholders, and members and all other persons interested in the insurer, except that such a discharge shall not affect the rights of the insurer's insureds, creditors, shareholders, and members and all other persons interested in the insurer's estate to participate in distributions from the trust as otherwise provided in the act.

(b) Upon application of the rehabilitator for approval of the plan and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company if all rights of shareholders are first relinquished. A plan for a life insurer may also propose the imposition of a moratorium upon loan and cash surrender rights under policies for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under sections 44-4826 and 44-4827 to avoid fraudulent transfers.

Source: Laws 1989, LB 319, § 14; Laws 1991, LB 236, § 69; Laws 2005, LB 119, § 12.

ARTICLE 49

MANAGING GENERAL AGENTS

Section
44-4902. Terms, defined.
44-4903. License; requirements.

Section
44-4904. Contract; requirements.
44-4906. Insurer; duties.
44-4907. Acts of agent; how treated; examination authority.

44-4902 Terms, defined.

For purposes of the Managing General Agents Act:

(1) Actuary means a person who is a member in good standing of the American Academy of Actuaries;

(2) Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;

(3) Director means the Director of Insurance;

(4) Insurer means any person duly licensed in this state as an insurance company pursuant to Chapter 44;

(5) Managing general agent means any person who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as an agent for such insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites in any one quarter or year an amount of gross direct written premium equal to or more than five percent of the policyholders surplus as reported in the last annual statement of the insurer in any one quarter or year and who (a) adjusts or pays claims in excess of ten thousand dollars or (b) negotiates reinsurance on behalf of the insurer. Managing general agent does not include an attorney in fact for a reciprocal or interinsurance exchange under a power of attorney, an employee of the insurer, a United States manager of the United States branch of an alien insurer, or an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, and is subject to the Insurance Holding Company System Act and whose compensation is not based on the volume of premiums written;

(6) Person means an individual or a business entity; and

(7) Underwrite means the authority to accept or reject risk on behalf of the insurer.

Source: Laws 1990, LB 1136, § 113; Laws 1991, LB 236, § 86; Laws 1993, LB 583, § 108; Laws 2006, LB 875, § 7.

Cross References

Insurance Holding Company System Act, see section 44-2120.

44-4903 License; requirements.

No person shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless such person is licensed in accordance with the Insurance Producers Licensing Act. No person shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed in accordance with such act.

Source: Laws 1990, LB 1136, § 114; Laws 2006, LB 875, § 8.

Cross References

Insurance Producers Licensing Act, see section 44-4047.

44-4904 Contract; requirements.

No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, if both parties share responsibility for a particular function, specifies the division of such responsibilities and which contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

(2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;

(3) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in an institution that is insured by the Federal Deposit Insurance Corporation. The account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses;

(4) Separate records of business written by the managing general agent will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer, and the director shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the director. Such records shall be retained as determined by the director;

(5) The contract may not be assigned in whole or in part by the managing general agent;

(6) Appropriate underwriting guidelines, including:

(a) The maximum annual premium volume;

(b) The basis of the rates to be charged;

(c) The types of risks which may be written;

(d) Maximum limits of liability;

(e) Applicable exclusions;

(f) Territorial limitations;

(g) Policy cancellation provisions; and

(h) The maximum policy period. The insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable insurance statutes and regulations;

(7) The insurer shall require the managing general agent to obtain and maintain a surety bond for the protection of the insurer. The bond amount shall be at least one hundred thousand dollars or ten percent of the managing general agent's total annual written premium nationwide produced by the managing general agent for the insurer in the prior calendar year, whichever is greater, but not greater than five hundred thousand dollars;

(8) The insurer may require the managing general agent to maintain an errors and omissions policy;

(9) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims must be reported to the insurer in a timely manner;

(b) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the director or exceeds the limit set by the insurer, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment of an amount set by the director or an amount set by the insurer, whichever is less;

(c) All claim files will be the joint property of the insurer and the managing general agent. Upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate, and the managing general agent shall have reasonable access to and the right to copy the files on a timely basis; and

(d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination;

(10) If electronic claims files are in existence, the contract must address the timely transmission of the data;

(11) The managing general agent shall use only advertising material pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use; and

(12) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits will not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section 44-4906.

Source: Laws 1990, LB 1136, § 115; Laws 2006, LB 875, § 9.

44-4906 Insurer; duties.

(1) The insurer shall have on file an independent audited financial examination or reports for the two most recent fiscal years that prove that the managing general agent has a positive net worth. If the managing general agent has been in existence for less than two fiscal years, the managing general agent shall include financial statements or reports, certified by an officer of the managing general agent and prepared in accordance with generally accepted accounting principles, for any completed fiscal years and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall

include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: (a) Amounts shown on the consolidated audited financial/annual report shall be shown on the worksheet; (b) amounts for each entity shall be stated separately; and (c) explanations of consolidating and eliminating entries.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. The opinion shall be in addition to any other required loss reserve certification.

(3) The insurer shall periodically, at least semiannually, conduct an onsite review of the underwriting and claims-processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer who is not affiliated with the managing general agent.

(5) Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the director. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the director may request.

(6) An insurer shall each quarter review its books and records to determine if any producer has become a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the director of such determination and the insurer and producer shall fully comply with the Managing General Agents Act within thirty days.

(7) No officer, director, employee, subproducer, or controlling shareholder of the insurer's managing general agent shall be appointed to its board of directors. This subsection shall not apply to relationships governed by the Insurance Holding Company System Act.

(8) The insurer shall keep the bond required by subdivision (7) of section 44-4904 on file for review by any applicable state insurance director, superintendent, or commissioner.

Source: Laws 1990, LB 1136, § 117; Laws 1991, LB 236, § 87; Laws 2006, LB 875, § 10.

Cross References

Insurance Holding Company System Act, see section 44-2120.

44-4907 Acts of agent; how treated; examination authority.

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined by the department as if it were the insurer.

Source: Laws 1990, LB 1136, § 118; Laws 2006, LB 875, § 11.

ARTICLE 51
INVESTMENTS

Section

44-5103 Terms, defined.

For purposes of the Insurers Investment Act:

(1) Admitted assets means the investments authorized under the act and stated at values at which they are permitted to be reported in the insurer's financial statement filed under section 44-322, except that admitted assets does not include assets of separate accounts, the investments of which are not subject to the act;

(2) Agent means a national bank, state bank, trust company, or broker-dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, agent may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities;

(3) Business entity means a sole proprietorship, corporation, limited liability company, association, partnership, limited liability partnership, joint-stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit;

(4) Clearing corporation means a clearing corporation as defined in subdivision (a)(5) of section 8-102, Uniform Commercial Code, that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, clearing corporation may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(5) Custodian means:

(a) A national bank, state bank, Federal Home Loan Bank, or trust company that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by the regulator charged with establishing such standards and assessing the solvency of such institutions and that is regulated by federal or state banking laws or the Federal Home Loan Bank Act or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, custodian may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

(b) A broker-dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars;

(6) Custodied securities means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(7) Direct when used in connection with the term obligation means that the designated obligor is primarily liable on the instrument representing the obligation;

(8) Director means the Director of Insurance;

(9) Insurer is defined as provided in section 44-103, and unless the context otherwise requires, insurer means domestic insurer;

(10) Mortgage means a consensual interest created by a real estate mortgage, a trust deed on real estate, or a similar instrument;

(11) Obligation means a bond, debenture, note, or other evidence of indebtedness or a participation, certificate, or other evidence of an interest in any of the foregoing;

(12) Policyholders surplus means the amount obtained by subtracting from the admitted assets (a) actual liabilities and (b) any and all reserves which by law must be maintained. In the case of a stock insurer, the policyholders surplus also includes the paid-up and issued capital stock;

(13) Securities Valuation Office means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners;

(14) Security certificate has the same meaning as defined in subdivision (a)(16) of section 8-102, Uniform Commercial Code;

(15) State means any state of the United States, the District of Columbia, or any territory organized by Congress;

(16) Tangible net worth means shareholders equity, less intangible assets, as reported in the broker-dealer's most recent Annual or Transition Report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, S.E.C. Form 10-K, filed with the Securities and Exchange Commission; and

(17) Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system mean the book-entry securities systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31 U.S.C. 3101 et seq. The operation of the systems are subject to 31 C.F.R. part 357 et seq.

Source: Laws 1991, LB 237, § 3; Laws 1997, LB 273, § 2; Laws 1999, LB 259, § 11; Laws 2005, LB 119, § 13; Laws 2007, LB117, § 12; Laws 2009, LB192, § 4.

44-5109 Investments in name of insurer.

An insurer's investments shall be held in its own name or the name of its nominee, except that:

(1) Investments may be held in the name of a clearing corporation, a custodian, or the nominee of either on the following conditions:

(a) The clearing corporation, custodian, or nominee shall be legally authorized to hold the particular investment for the account of others;

(b) Security certificates held by the custodian shall be held separate from the security certificates of the custodian and of all its other customers; and

(c) Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurer. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in a clearing corporation, the records shall also identify where the securities are and if in a clearing corporation, the name of the clearing corporation, and if through an agent, the name of the agent; and

(2) An insurer may participate through a member bank in the Federal Reserve book-entry system. The records of the member bank shall at all times show that the investments are held for the insurer or for specific accounts of the insurer.

Source: Laws 1991, LB 237, § 9; Laws 2005, LB 119, § 14.

44-5110 Participation.

(1) An insurer may invest in an individual interest of a pool of obligations or a fractional interest of a single obligation if:

(a) The certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the insurer, a custodian bank, or the nominee of either; and

(b) The certificate or confirmation, if held by a custodian bank, is kept separate and apart from the investment of others so that at all times the participation or interest may be identified as belonging solely to the insurer making the investment.

(2) If an investment is not evidenced by a certificate, adequate evidence of the insurer's investment shall be obtained from the issuer or its transfer or recording agent and retained by the insurer, custodian bank, or clearing corporation except as provided in subdivision (2) of section 44-5109. For

purposes of this subsection, adequate evidence shall mean a written receipt or other verification issued by the depository, issuer, or custodian bank which shows that the investment is held for the insurer. Transfers of ownership or investments held as described in subdivisions (1)(c) and (2) of section 44-5109 and this section may be evidenced by a bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificates, if any, evidencing the insurer's investment.

(3) Any investment made pursuant to this section shall also conform with the following:

(a) The investment in which the interest is purchased shall be authorized under the Insurers Investment Act; and

(b) The insurer's pro rata interest in the investment shall be in the same percentage as the par amount of its interest bears to the outstanding par amount of the investment at the time of purchase.

(4) An investment may be authorized under this section although its interest does not include the right to exercise the investor's rights or enforce the investor's remedies according to the provisions of the issue.

(5) Any investment made pursuant to this section shall be purchased pursuant to a written participation agreement.

Source: Laws 1991, LB 237, § 10; Laws 1997, LB 273, § 5; Laws 2003, LB 216, § 13; Laws 2007, LB117, § 13.

44-5111 Computation of investment limitations.

Any investment limitation in the Insurers Investment Act based upon the amount of the insurer's admitted assets or policyholders surplus shall relate to admitted assets or policyholders surplus as shown by the most recent financial statement filed by the insurer pursuant to section 44-322 unless the insurer's admitted assets or policyholders surplus is revised as a result of an examination conducted pursuant to the Insurers Examination Act, in which case the results of the examination shall control. Except as otherwise provided by law, an investment shall be measured by the lesser of actual cost or admitted value at the time of acquisition. If there is no actual cost at the time of acquisition, the investment shall be measured at the lesser of fair value or admitted value.

For purposes of this section, actual cost means the total amount invested, expended, or which should be reasonably anticipated to be invested or expended in the acquisition or organization of any investment, insurer, or subsidiary, including all organizational expenses or contributions to capital and surplus whether or not represented by the purchase of capital stock or issuance of other securities.

Source: Laws 1991, LB 237, § 11; Laws 1993, LB 583, § 111; Laws 2007, LB117, § 14.

Cross References

Insurers Examination Act, see section 44-5901.

44-5120 Lending of securities.

(1) An insurer may lend its securities if:

(a) The securities are created or existing under the laws of the United States and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the United States or an agency or instrumentality of the United States, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(b) The securities are created or existing under the laws of Canada or are securities described in section 44-5137 and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the foreign country, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(c) Prior to the loan, the borrower or any indemnifying party furnishes the insurer with or the insurer otherwise obtains the most recent financial statement of the borrower or any indemnifying party;

(d) The insurer receives a reasonable fee related to the market value of the loaned securities and to the term of the loan;

(e) The loan is made pursuant to a written loan agreement; and

(f) The borrower is required to furnish by the close of each business day during the term of the loan a report of the market value of all collateral and the market value of all loaned securities as of the close of trading on the previous business day. If at the close of any business day the market value of the collateral for any loan outstanding to a borrower is less than one hundred percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day an additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities for that loan.

(2) For purposes of this section, market value includes accrued interest.

(3) An insurer shall effect securities lending only through the services of a custodian bank or similar entity as approved by the director.

(4) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.

Source: Laws 1991, LB 237, § 20; Laws 1997, LB 273, § 10; Laws 2002, LB 1139, § 28; Laws 2003, LB 216, § 15; Laws 2007, LB117, § 15.

44-5137 Foreign securities.

(1) An insurer may invest in securities or other investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal or interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in countries other than the United States or Canada, which are substantially of the same kinds and classes as those authorized for investment under the Insurers Investment Act.

(2) Subject to the limitations in subsection (3) of this section:

(a) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 1 designation from the Securities Valuation Office shall not exceed ten percent of the insurer's admitted assets;

(b) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 2 or 3 designation from the Securities Valuation Office shall not exceed five percent of the insurer's admitted assets;

(c) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 4, 5, or 6 designation from the Securities Valuation Office shall not exceed three percent of the insurer's admitted assets;

(d) An insurer's investments authorized under subsection (1) of this section denominated in any one foreign currency shall not exceed two percent of the insurer's admitted assets;

(e) An insurer's investments authorized under subsection (1) of this section denominated in foreign currencies, in the aggregate, shall not exceed five percent of the insurer's admitted assets; and

(f) An insurer's investments authorized under subsection (1) of this section shall not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section 44-5149 to exchange all payments made on the foreign currency denominated investments for United States currency at a rate which effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) An insurer's investments authorized under subsection (1) of this section shall not exceed, in the aggregate, twenty percent of its admitted assets.

(4) An insurer which is authorized to do business in a foreign country or which has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign country may, in addition to the investments authorized by subsection (1) of this section, invest in securities and investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal and interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in such foreign countries, which are substantially of the same kinds and classes as those authorized for investment under the act.

(5) An insurer's investments authorized under subsection (4) of this section and cash in the currency of such country which is at any time held by such insurer, in the aggregate, shall not exceed the greater of (a) one and one-half times the amount of its reserves and other obligations under such contracts or (b) the amount which such insurer is required by law to invest in such country.

(6) Any investment in debt obligations authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 44-5112.

(7) An insurer's investments made under this section shall be aggregated with investments of the same kinds and classes made under the Insurers Investment Act except section 44-5153 for purposes of determining compliance with the limitations contained in other sections.

Source: Laws 1991, LB 237, § 37; Laws 1997, LB 273, § 18; Laws 2007, LB117, § 16.

Cross References

Bonds of the State of Israel, see section 8-148.03.

44-5140 Preferred stock.

(1) An insurer may invest in the preferred stock of any corporation which:

(a) Has retained earnings of not less than one million dollars;

(b) Has earned and paid regular dividends at the regular prescribed rate each year upon its preferred stock, if any is or has been outstanding, for not less than five years immediately preceding the purchase of such preferred stock or during such part of such five-year period as it has had preferred stock outstanding; and

(c) Has had no material defaults in principal payments of or interest on any obligations of such corporation and its subsidiaries having a priority equal to or higher than those purchased during the period of five years immediately preceding the date of acquisition or, if outstanding for less than five years, at any time since such obligations were issued.

The earnings of and the regular dividends paid by all predecessor, merged, consolidated, or purchased corporations may be included through the use of consolidated or pro forma statements.

(2) Except as authorized under the Insurance Holding Company System Act, an insurer shall not own more than five percent of the total issued shares of stock of any corporation other than an insurer.

(3) A life insurer's investments authorized under this section shall not exceed the greater of twenty-five percent of its admitted assets or one hundred percent of its policyholders surplus, nor shall a life insurer's investments authorized under this section that are not rated P-1 or P-2 by the Securities Valuation Office exceed ten percent of its admitted assets.

Source: Laws 1991, LB 237, § 40; Laws 2007, LB117, § 17.

Cross References

Insurance Holding Company System Act, see section 44-2120.

44-5141 Common stock; equity interests.

(1) An insurer may invest in the common stock or rights to purchase or sell common stock of any corporation which has retained earnings of not less than one million dollars, except that an investment may be made in any corporation having a majority of its operations in this state which has retained earnings of not less than two hundred fifty thousand dollars. The earnings of all predecessor, merged, consolidated, or purchased corporations shall be included through the use of consolidated or pro forma statements.

(2)(a) An insurer may invest in equity interests or rights to purchase or sell equity interests in business entities other than general partnerships.

(b)(i) A life insurer's investments authorized under this subsection shall not exceed fifty percent of its policyholders surplus.

(ii) A life insurer shall not invest under this subsection in any investment which the life insurer may invest in under section 44-5140 or 44-5144 or subsection (1) of this section.

(3) Except as authorized under the Insurance Holding Company System Act, an insurer shall not invest in more than ten percent of the total equity interests in any business entity other than an insurer.

(4) A life insurer's investments authorized under this section shall not exceed one hundred percent of its policyholders surplus.

Source: Laws 1991, LB 237, § 41; Laws 1997, LB 273, § 20; Laws 2007, LB117, § 18.

Cross References

Insurance Holding Company System Act, see section 44-2120.

44-5143 Real estate mortgages.

(1) An insurer may invest in bonds or notes secured by a first mortgage on real estate in the United States or Canada if the amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed eighty percent of the appraised value of the real estate and improvements at the time of making the investment, or if the funds are used for a construction loan, the amount does not exceed eighty percent of the market value of the real estate together with the actual costs of improvements constructed thereon at the time of final funding by the insurer. The limitation in this subsection shall not:

(a) Apply to investments authorized under section 44-5132;

(b) Prohibit an insurer from renewing or extending a loan for the original amount when the value of such real estate has depreciated;

(c) Prohibit an insurer from accepting, as part payment for real estate sold by it, a mortgage thereon for more than eighty percent of the purchase price of such real estate; or

(d) Prohibit an insurer from advancing additional loan funds to protect its real estate security.

(2) An insurer may invest in bonds or notes secured by a first mortgage on leasehold estates in improved real estate located in the United States or Canada if:

(a) Such underlying real estate is unencumbered except by rentals to accrue therefrom to the owner of the real estate;

(b) There is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated, or otherwise disturbed so long as the lessee is not in default;

(c) The amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed eighty percent of the appraised value of such leasehold with improvements at the time of making the loan; and

(d) Such mortgage loan will be completely amortized during the unexpired portion of the lease or leasehold estate.

(3) Nothing in this section shall prevent any amount invested under this section that exceeds eighty percent of the appraised value of the real estate or leasehold and improvements, as the case may be, from being authorized under section 44-5153.

(4) All buildings and other real estate improvements which constitute a material part of the value of the mortgaged premises, whether estates in fee or leasehold estates or combination thereof, shall be (a)(i) substantially completed before the investment is made or (ii) of a value that is at all times substantial in value in relation to the amount of construction loan funds advanced by the insurer on account of the loan and (b) kept insured against loss or damage by fire or windstorm in a reasonable amount for the benefit of the mortgagee.

(5) If there are more than four holders of the issue of such bonds or notes described in subsection (1) or (2) of this section, (a) the security of such bonds or notes, as well as all collateral papers including insurance policies executed in connection therewith, shall be made to and held by a trustee, which trustee shall be a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of a bank or trust company incorporated under the laws of this state, in which case a paid-in capital of not less than one hundred thousand dollars shall be required, and (b) it shall be agreed that, in case of proper notification of default, such trustee, upon request of at least twenty-five percent of the holders of the par amount of the bonds outstanding and proper indemnification, shall proceed to protect the rights of such bondholders under the provisions of the trust indenture.

(6)(a) An insurer may invest in notes or bonds secured by second mortgages or other second liens, including all inclusive or wraparound mortgages or liens, upon real property encumbered only by a first mortgage or lien which meets the requirements set forth in this section, subject to either of the following conditions:

(i) The insurer also owns the note or bond secured by the prior first mortgage or lien and the aggregate value of both loans does not exceed the loan to market value ratio requirements of this section; or

(ii) The note or bond is secured by an all-inclusive or wraparound lien or mortgage which conforms to the requirements set forth in subdivision (b) of this subsection, if the aggregate value of the resulting loan does not exceed the loan to market value ratio requirements of this section.

(b) For purposes of this subsection, the terms wraparound and all-inclusive lien or mortgage refer to a loan made by an insurer to a borrower on the security of a mortgage or lien on real property other than property containing a residence of one to four units or on which a residence of one to four units is to be constructed, where such real property is encumbered by a first mortgage or lien and which loan is subject to all of the following requirements:

(i) There is no more than one preexisting mortgage or lien on the real property;

(ii) The total amount of the obligation of the borrower to the insurer under the loan is not less than the sum of the amount disbursed by the insurer on account of the loan and the outstanding balance of the obligation secured by the preexisting lien or mortgage;

(iii) The instrument evidencing the lien or mortgage by which the obligation of the borrower to the insurer under the loan is secured, is recorded, and the

lien is insured under a policy of title insurance in an amount not less than the total amount of the obligation of the borrower to the insurer under the loan; and

(iv) The insurer either (A) files for record in the office of the recorder of the county in which the real property is located a duly acknowledged request for a copy of any notice of default or of sale under the preexisting lien or (B) is entitled under applicable law to receive notice of default, sale, or foreclosure of the preexisting lien.

(7)(a) An insurer may invest in mezzanine real estate loans subject to the following conditions:

(i) The terms of the mezzanine loan agreement:

(A) Require that each pledgor abstain from granting additional security interests in the equity interest pledged;

(B) Employ techniques to minimize the likelihood or impact of a bankruptcy filing on the part of the real estate owner or the mezzanine real estate loan borrower; and

(C) Require the real estate owner, or mezzanine real estate loan borrower, to: (I) Hold no assets other than, in the case of the real estate owner, the real property, and in the case of the mezzanine borrower, the equity interest in the real estate owner; (II) not engage in any business other than, in the case of the real estate owner, the ownership and operation of the real estate, and in the case of the mezzanine real estate borrower, holding an ownership interest in the real estate owner; and (III) not incur additional debt, other than limited trade payables, a first mortgage loan, and the mezzanine real estate loan; and

(ii) At the time of the initial investment, the mezzanine real estate loan lender shall corroborate that the sum of the first mortgage and the mezzanine real estate loan does not exceed one hundred percent of the value of the real estate as evidenced by a current appraisal.

(b) The value of an insurer's investments authorized under this subsection shall not exceed three percent of its admitted assets.

(c) For purposes of this subsection, mezzanine real estate loan refers to a loan made by an insurer to a borrower on the security of debt obligation, that is not a security, which is secured by a pledge of a direct or indirect equity interest in an entity that owns real estate.

(8) An insurer's investments authorized under this section shall not exceed forty percent of its admitted assets, and an insurer's investments authorized under this section and section 44-5144, in the aggregate, shall not exceed fifty percent of its admitted assets.

Source: Laws 1991, LB 237, § 43; Laws 2004, LB 1047, § 18; Laws 2005, LB 119, § 15.

44-5144 Real estate.

(1) An insurer may acquire and hold unencumbered real estate or certificates evidencing participation with other investors, either directly or through partnership or limited liability company interests, in unencumbered real estate if:

(a) The real estate is leased under a lease contract in which the lessee contracts to pay all assessments, taxes, maintenance, and operating costs;

(b) The net amount of the annual lease payments to the owner of the real estate is sufficient to amortize the cost of the real estate within the duration of the lease, but in no event for a period of longer than forty years, and pay at least three percent per annum on the unamortized balance of the cost of the real estate; and

(c) The amount invested in any such real estate does not exceed its appraised value.

When the lessee under a lease described in this subsection is the United States or any agency or instrumentality thereof, any state or any county, municipality, district, or other governmental subdivision thereof, or any agency, board, authority, or institution established or maintained under the laws of the United States or any state thereof, such lease contract may provide that upon the termination of the term thereof, title to such real estate shall vest in the lessee.

When an insurer owns less than the entire real estate leased under a lease described in this subsection, the legal title to the real estate shall be in the name of a trustee which meets the qualifications set out in subsection (5) of section 44-5143 under a trust agreement which provides, among other things, that upon proper notification of default under such lease and request to such trustee by an investor or investors representing at least twenty-five percent of the equitable ownership of the real estate and proper indemnification, the trustee shall proceed to protect the rights and interest of the investors owning the equitable title to the real estate.

For purposes of this subsection, unencumbered real estate means real estate in which other interests may exist which if enforced would not result in the forfeiture of the insurer's interest.

(2) An insurer may also acquire and hold real estate:

(a) Mortgaged to it in good faith by way of security for a loan previously contracted or for money due;

(b) Conveyed to it in satisfaction of debts previously contracted in the course of its dealings; and

(c) Purchased at sale upon judgments, decrees, or mortgages obtained or made for such debts.

(3) An insurer may invest in real estate required for its home offices or to be otherwise occupied by the insurer or its employees in the transaction of its business and may rent the balance of the space therein. The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(4)(a) An insurer with policyholders surplus of at least one million dollars may individually or in conjunction with other investors acquire, own, hold, develop, and improve real estate that is essentially residential or commercial in character, even though subject to an existing mortgage or thereafter mortgaged by the insurer, if such real estate is located in a city or village or within five miles of the limits thereof.

(b) For purposes of this subsection, real estate shall include a leasehold having an unexpired term of at least twenty years, including the term provided by any enforceable option of renewal. The income from such leasehold shall be applied so as to amortize the cost of leasehold and improvements within the lesser of eighty percent of such unexpired term or forty years from acquisition.

(c) The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(5) An insurer may also acquire such other real estate as may be acquired ancillary to a corporate merger, acquisition, or reorganization of the insurer.

(6) The value of an insurer's investments authorized under subsections (3), (4), and (5) of this section, in the aggregate, shall not exceed fifteen percent of its admitted assets.

(7) For purposes of this section, value shall mean original cost plus any development and improvement costs whenever expended less the unpaid balance of any mortgage and annual depreciation on improvements of not less than two percent.

(8) An insurer's investments authorized under this section and section 44-5143, in the aggregate, shall not exceed fifty percent of its admitted assets.

Source: Laws 1991, LB 237, § 44; Laws 1993, LB 121, § 260; Laws 1997, LB 273, § 21; Laws 2005, LB 119, § 16.

44-5149 Hedging transactions; derivative instruments.

(1) An insurer may use derivative instruments in hedging transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in hedging transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders surplus;

(b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders surplus; and

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders surplus.

(2)(a) An insurer may use derivative instruments in income-generation transactions by selling:

(i) Covered call options on non-callable fixed income securities or callable fixed income securities if the option expires by its terms prior to the end of the non-callable period;

(ii) Covered call options on equity securities if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(iii) Covered puts on investments that the insurer is permitted to acquire under the Insurers Investment Act if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under that put during the complete term of the put option sold; and

(iv) Covered caps or floors if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under such caps or floors during the complete term that the cap or floor is outstanding.

(b) An insurer may enter into income-generation transactions under this subsection if the aggregate statement value of the fixed income assets that are

subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying any derivative instrument subject to call, does not exceed the lesser of ten percent of the insurer's admitted assets or one hundred percent of the insurer's policyholders surplus.

(3) An insurer may use derivative instruments in replication transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in replication transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders' surplus;

(b) The aggregate statement value of options, caps, and floors written in replication transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders' surplus;

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in replication transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders' surplus;

(d) The replication transactions are limited to the replication of investments or instruments otherwise permitted under the Insurers Investment Act; and

(e) The insurer engages in hedging transactions or income generation transactions pursuant to this section and has sufficient experience with derivatives generally such that its performance and procedures reflect that the insurer has been successful in adequately identifying, measuring, monitoring, and limiting exposures associated with such transactions and that the insurer has superior corporate controls over such activities as well as a sufficient number of dedicated staff who are knowledgeable and skilled with these sophisticated financial instruments.

(4) An insurer may purchase or sell one or more derivative instruments to offset any derivative instrument previously purchased or sold, as the case may be, without regard to the quantitative limitations of this section, provided that the derivative instrument is an exact offset to the original derivative instrument being offset.

(5) An insurer shall demonstrate to the director upon request the intended hedging, income-generation, or replication characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analysis.

(6) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations in section 44-5115.

(7) The director may approve additional transactions involving the use of derivative instruments pursuant to rules and regulations adopted and promulgated by the director.

(8) For purposes of this section:

(a) Derivative instrument means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

Derivative instrument includes all investment instruments or contracts that derive all or almost all of their value from the performance of an underlying market, index, or financial instrument, including, but not limited to, options, warrants, caps, floors, collars, swaps, credit default swaps, swaptions, forwards, and futures. Derivative instrument does not include investments authorized under any other section of the Insurers Investment Act;

(b) Hedging transaction means a derivative transaction which is entered into and maintained to reduce:

(i) The risk of a change in value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(ii) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring;

(c) Income-generation transaction means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return; and

(d) Replication transaction means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's portfolio in order to replicate the investment characteristic of another authorized transaction, investment, or instrument or that may operate as a substitute for cash market investments. A derivative transaction entered into by the insurer as a hedging or income-generation transaction authorized pursuant to this section shall not be considered a replication transaction.

Source: Laws 1991, LB 237, § 49; Laws 1997, LB 273, § 22; Laws 2005, LB 119, § 17.

44-5152 Securities Valuation Office; designated obligations; limitation.

(1) In addition to investments otherwise authorized under the Insurers Investment Act and subject to the limitations in subsections (2) and (3) of this section, an insurer may invest in obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2) Subject to the limitation in subsection (3) of this section, an insurer shall not acquire, directly or indirectly through an investment subsidiary, investments in obligations:

(a) Having a 4 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed four percent of the insurer's admitted assets;

(b) Having a 5 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed two percent of the insurer's admitted assets; and

(c) Having a 6 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed one percent of the insurer's admitted assets.

(3) An insurer shall not acquire, directly or indirectly through an investment subsidiary, investments under this section if, as a result of and giving effect to the investment, the aggregate amount would exceed fifteen percent of the insurer's admitted assets.

Source: Laws 1991, LB 237, § 52; Laws 1997, LB 273, § 24; Laws 2007, LB117, § 19.

44-5153 Additional authorized investments.

(1)(a)(i) A life insurer may make investments not otherwise authorized under the Insurers Investment Act in an amount, in the aggregate, not exceeding the lesser of five percent of its admitted assets or one hundred percent of its policyholders surplus.

(ii) An insurer other than a life insurer may make investments not otherwise authorized under the act in an amount, in the aggregate, not exceeding the lesser of twenty-five percent of the amount by which its admitted assets exceed its total liabilities, excluding capital, or five percent of its admitted assets.

(b) Investments authorized under this subsection shall not include obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2)(a) In addition to the provisions of subdivision (1)(a)(i) of this section, a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of ten percent of its admitted assets.

(b) In addition to the provisions of subdivisions (1)(a)(ii) and (b) of this section, an insurer other than a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of fifty percent of its annual net written premiums as shown by the most recent annual financial statement filed by the insurer pursuant to section 44-322.

(3) Investments authorized under subsection (1) or (2) of this section shall not include insurance agents' balances or amounts advanced to or owing by insurance agents.

(4) The limitations set forth in this section shall be applied at the time the investment in question is made and at the end of each calendar quarter. An insurer's investment, which at the time of its acquisition was authorized only under the provisions of this section but which has subsequently and while held by such insurer become of such character as to be authorized elsewhere under the act, shall not be included in determining the amount of such insurer's investments, in the aggregate, authorized under this section, and investments otherwise authorized under the act at the time of their acquisition shall not be included in making such determination.

(5) Derivative instruments described in subsections (1), (2), and (3) of section 44-5149 shall not be authorized investments under this section.

Source: Laws 1991, LB 237, § 53; Laws 1997, LB 273, § 25; Laws 2005, LB 119, § 18; Laws 2007, LB117, § 20.

44-5154 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Insurers Investment Act, including, but not limited to, establishing standards

for qualification as custodians for insurer investments and establishing requirements for custody agreements.

Source: Laws 1991, LB 237, § 54; Laws 2005, LB 119, § 19.

ARTICLE 52

SMALL EMPLOYER HEALTH INSURANCE

Section
44-5223. Act, how cited.
44-5225. Definitions, where found.
44-5230. Basic health benefit plan, defined.
44-5231.01. Bona fide association, defined.
44-5236. Repealed. Laws 2009, LB 154, § 27.
44-5255. Standard health benefit plan, defined.
44-5260. Small employer, defined; group health plan; health benefit plans; requirements; filing; exceptions; preexisting condition exclusion; network plans.
44-5262. Repealed. Laws 2009, LB 154, § 27.
44-5263. Board; report required; contents.

44-5223 Act, how cited.

Sections 44-5223 to 44-5267 shall be known and may be cited as the Small Employer Health Insurance Availability Act.

Source: Laws 1994, LB 1222, § 1; Laws 1997, LB 862, § 30; Laws 2000, LB 1253, § 33; Laws 2002, LB 1139, § 29; Laws 2009, LB192, § 5.

44-5225 Definitions, where found.

For purposes of the Small Employer Health Insurance Availability Act, the definitions found in sections 44-5226 to 44-5255.01 shall be used.

Source: Laws 1994, LB 1222, § 3; Laws 1997, LB 862, § 31; Laws 2000, LB 1253, § 34; Laws 2002, LB 1139, § 30; Laws 2009, LB192, § 6.

44-5230 Basic health benefit plan, defined.

Basic health benefit plan shall mean a lower cost health benefit plan regulated by the board.

Source: Laws 1994, LB 1222, § 8; Laws 2009, LB154, § 9.

44-5231.01 Bona fide association, defined.

Bona fide association means, with respect to health insurance coverage offered in this state, an association that meets the following conditions:

(1) Has been actively in existence for at least five years;

(2) Has been formed and maintained in good faith for purposes other than obtaining insurance;

(3) Does not condition membership in the association on a health-status-related factor of an individual, including an employee or a dependent of any employee;

(4) Makes health insurance coverage offered through the association available to any member regardless of a health-status-related factor of the member or individual eligible for coverage through a member; and

(5) Does not make available health insurance coverage offered through the association other than in connection with a member of the association.

Source: Laws 2009, LB192, § 7.

44-5236 Repealed. Laws 2009, LB 154, § 27.

44-5255 Standard health benefit plan, defined.

Standard health benefit plan shall mean a health benefit plan regulated by the board.

Source: Laws 1994, LB 1222, § 33; Laws 2009, LB154, § 10.

44-5260 Small employer, defined; group health plan; health benefit plans; requirements; filing; exceptions; preexisting condition exclusion; network plans.

(1) For purposes of this section, small employer shall mean, in connection with a group health plan with respect to a calendar year and a plan year, any person, firm, corporation, partnership, association, or political subdivision that is actively engaged in business that employed an average of at least two but not more than fifty employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code shall be treated as one employer. Subsequent to the issuance of a health benefit plan to a small employer and for the purpose of determining continued eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of the Small Employer Health Insurance Availability Act that apply to a small employer shall continue to apply at least until the health benefit plan anniversary following the date the small employer no longer meets the requirements of this definition. In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year. Any reference in the act to an employer shall include a reference to any predecessor of such employer.

(2)(a) Every small employer carrier shall, as a condition of transacting business in this state with small employers, actively offer to small employers all health benefit plans it actively markets to small employers in this state, including at least two health benefit plans. One health benefit plan offered by each small employer carrier shall be a basic health benefit plan, and one plan shall be a standard health benefit plan. A small employer carrier shall be considered to be actively marketing a health benefit plan if it offers that plan to any small employer not currently receiving a health benefit plan by such small employer carrier. This subdivision shall not require a small employer carrier to offer to small employers a health benefit plan marketed only through a bona fide association.

(b)(i) Subject to subdivision (2)(a) of this section, a small employer carrier shall issue any health benefit plan to any eligible small employer that applies for the plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with the Small Employer Health Insurance Availability Act. However, no small

employer carrier shall be required to issue a health benefit plan to a self-employed individual who is covered by, or is eligible for coverage under, a health benefit plan offered by an employer.

(ii) In the case of a small employer carrier that establishes more than one class of business, the small employer carrier shall maintain and issue to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each class of business so established. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business if:

(A) The criteria are not intended to discourage or prevent acceptance of small employers applying for a basic health benefit plan or a standard health benefit plan;

(B) The criteria are not related to the health status or claim experience of employees or dependents of the small employer;

(C) The criteria are applied consistently to all small employers applying for coverage in the class of business; and

(D) The small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

The provisions of subdivision (2)(b)(ii) of this section shall not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(3)(a) A small employer carrier shall file with the director, in a format and manner prescribed by the director, the basic health benefit plans and the standard health benefit plans to be used by the carrier. A health benefit plan filed pursuant to this subsection may be used by a small employer carrier beginning thirty days after it is filed unless the director disapproves its use.

(b) The director at any time may, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic health benefit plan or standard health benefit plan on the grounds that the plan does not meet the requirements of the act.

(4) Health benefit plans covering small employers shall comply with the following provisions:

(a) A health benefit plan shall not deny, exclude, or limit benefits for a covered individual for losses incurred more than twelve months, or eighteen months in the case of a late enrollee, following the enrollment date of the individual's coverage due to a preexisting condition or the first date of the waiting period for enrollment if that date is earlier than the enrollment date. A health benefit plan shall not define a preexisting condition more restrictively than as defined in section 44-5246.02. A health benefit plan shall not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition;

(b) A health benefit plan shall not impose any preexisting condition exclusion:

(i) To an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage, and the individual had creditable coverage that was continuous to a date not more than sixty-three days prior to the enrollment date of new coverage; or

(ii) To a child less than eighteen years of age who is adopted or placed for adoption and who, as of the last day of the thirty-day period beginning on the

date of the adoption or placement for adoption, is covered under creditable coverage, and the child had creditable coverage that was continuous to a date not more than sixty-three days prior to the enrollment date of new coverage;

(c)(i) A small employer carrier shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in a health benefit plan for the aggregate period of time an individual was previously covered by creditable coverage that provided benefits with respect to such services if the creditable coverage was continuous to a date not more than sixty-three days prior to the enrollment date of new coverage. The period of continuous coverage shall not include any waiting period or affiliation period for the effective date of the new coverage applied by the employer or the carrier. This subdivision shall not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(ii) A small employer carrier that does not use preexisting condition limitations in any of its health benefit plans may impose an affiliation period:

(A) That does not exceed sixty days for new entrants and does not exceed ninety days for late enrollees;

(B) During which the carrier charges no premiums and the coverage issued is not effective; and

(C) That is applied uniformly, without regard to any health-status-related factor.

(iii) This subdivision does not preclude application of any waiting period applicable to all enrollees under the health benefit plan if any carrier waiting period is no longer than sixty days.

(iv)(A) In lieu of the requirements of subdivision (4)(c)(i) of this section, a small employer carrier may elect to reduce the period of any preexisting condition exclusion based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations.

(B) A small employer electing to reduce the period of any preexisting condition exclusion using the alternative method described in subdivision (4)(c)(iv)(A) of this section shall make the election on a uniform basis for all enrollees and count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

(C) A small employer carrier electing to reduce the period of any preexisting condition exclusion using the alternative method described in subdivision (4)(c)(iv)(A) of this section shall prominently state that the election has been made in any disclosure statements concerning coverage under the health benefit plan to each enrollee at the time of enrollment under the plan and to each small employer at the time of the offer or sale of the coverage and include in the disclosure statements the effect of the election;

(d)(i) A small employer carrier shall permit an eligible employee or dependent, who requests enrollment following the open enrollment opportunity, to enroll, and the eligible employee or dependent shall not be considered a late enrollee if the eligible employee or dependent:

(A) Was covered under another health benefit plan at the time the eligible employee or dependent was eligible to enroll;

(B) Stated in writing at the time of the open enrollment period that coverage under another health benefit plan was the reason for declining enrollment but

only if the health benefit plan or health carrier required such a written statement and provided a notice of the consequences of such written statement;

(C) Has lost coverage under another health benefit plan as a result of the termination of employment, the termination of the other health benefit plan's coverage, death of a spouse, legal separation, or divorce or was under a continuation-of-coverage policy or contract available under federal law and the coverage was exhausted; and

(D) Requests enrollment within thirty days after the termination of coverage under the other health benefit plan.

(ii)(A) If a small employer carrier issues a health benefit plan and makes coverage available to a dependent of an eligible employee and such dependent becomes a dependent of the eligible employee through marriage, birth, adoption, or placement for adoption, then such health benefit plan shall provide for a dependent special enrollment period during which the dependent may be enrolled under the health benefit plan and, in the case of the birth or adoption of a child, the spouse of an eligible employee may be enrolled if otherwise eligible for coverage.

(B) A dependent special enrollment period shall be a period of not less than thirty days and shall begin on the later of (I) the date such dependent coverage is available or (II) the date of the marriage, birth, adoption, or placement for adoption.

(C) If an eligible employee seeks to enroll a dependent during the first thirty days of such a dependent special enrollment period, the coverage of the dependent shall become effective:

(I) In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(II) In the case of the birth of a dependent, as of the date of birth; and

(III) In the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption;

(e)(i) Except as provided in subdivision (4)(e)(iv) of this section, requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier.

(ii) A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(iii)(A) Except as provided in subdivision (4)(e)(iii)(B) of this section, in applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider employees or dependents who have creditable coverage in determining whether the applicable percentage of participation is met.

(B) With respect to a small employer with ten or fewer eligible employees, a small employer carrier may consider employees or dependents who have coverage under another health benefit plan sponsored by such small employer in applying minimum participation requirements.

(iv) A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage; and

(f)(i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents who apply for enrollment during the period in which the employee first becomes eligible to enroll under the terms of the plan. A small employer carrier shall not offer coverage to only certain individuals in a small employer group or to only part of the group except in the case of late enrollees as provided in subdivision (4)(a) of this section.

(ii) Except as permitted under subdivisions (a) and (d) of this subsection, a small employer carrier shall not modify a health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(iii) A small employer carrier shall not place any restriction in regard to any health-status-related factor on an eligible employee or dependent with respect to enrollment or plan participation.

(5) A small employer carrier shall not be required to offer coverage or accept applications pursuant to subsection (2) of this section in the case of the following:

(a) To an employee if previous basic health benefit plans or standard health benefit plans have, in the aggregate, paid one million dollars in benefits on behalf of the employee. Benefits paid on behalf of the employee in the immediately preceding two calendar years by prior small employer carriers under basic and standard plans shall be included when calculating the lifetime maximum benefits payable under the succeeding basic or standard plans. In any situation in which a determination of the total amount of benefits paid by prior small employer carriers is required by the succeeding carrier, prior carriers shall furnish a statement of the total benefits paid under basic and standard plans at the succeeding carrier's request; or

(b) Within an area where the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the director, that it will not have the capacity within its established geographic service area to deliver service adequately to the members of such groups because of its obligations to existing group policyholders and enrollees.

(6)(a) A small employer carrier offering coverage through a network plan shall not be required to offer coverage or accept applications pursuant to subsection (2) of this section to or from a small employer as defined in subsection (1) of this section:

(i) If the small employer does not have eligible employees who live, work, or reside in the service area for such network plan; or

(ii) If the small employer does have eligible employees who live, work, or reside in the service area for such network plan, the carrier has demonstrated, if required, to the director that it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees and that it is applying subdivision (6)(a)(ii) of this section uniformly to all employers without regard to the claims

experience of those employers and their employees and their dependents or any health-status-related factor relating to such employees and dependents.

(b) A small employer carrier, upon denying health insurance coverage in any service area in accordance with subdivision (6)(a)(ii) of this section, shall not offer coverage in the small employer market within such service area for a period of one hundred eighty days after the date such coverage is denied.

(7) A small employer carrier shall not be required to provide coverage to small employers pursuant to subsection (2) of this section for any period of time for which the director determines that requiring the acceptance of small employers in accordance with the provisions of such subsection would place the small employer carrier in a financially impaired condition.

Source: Laws 1994, LB 1222, § 38; Laws 1995, LB 837, § 4; Laws 1997, LB 862, § 46; Laws 2002, LB 1139, § 33; Laws 2009, LB192, § 8.

44-5262 Repealed. Laws 2009, LB 154, § 27.

44-5263 Board; report required; contents.

The board shall study and report at least every three years to the director on the effectiveness of the Small Employer Health Insurance Availability Act. The report shall analyze the effectiveness of the act in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small group health insurance marketplace. The report shall address whether carriers, agents, and brokers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of the act. The report may contain recommendations for market conduct or other regulatory standards or action.

Source: Laws 1994, LB 1222, § 41; Laws 2009, LB154, § 11.

ARTICLE 53
HEALTH INSURANCE ACCESS

Section

44-5302 Legislative findings and declarations.

The Legislature finds and declares that there is a significant number of Nebraskans who lack health insurance and that these uninsured people include many individuals and families who cannot afford the rising cost of medical care but do not qualify for the various income-based assistance programs. The lack of financial means of uninsured people and families to pay for their medical care leaves health care providers with uncollectible debts which are transferred to other patients and to insurers. It is the purpose and intent of the Legislature to provide a mechanism to allow insurers to provide basic levels of health insurance to those people who are uninsured and are not qualified for income-based assistance programs.

Source: Laws 1991, LB 419, § 30; Laws 2009, LB445, § 1.

44-5303 Terms, defined.

For purposes of the Health Insurance Access Act:

(1) Insurer shall mean any insurance company as defined in section 44-103 authorized to transact health insurance business in the State of Nebraska or a health maintenance organization which has obtained a valid certificate of authority;

(2) Medicare shall mean parts A, B, C, and D of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended;

(3) Provider shall mean any physician or hospital who is licensed or authorized in this state to furnish medical care or hospitalization to any individual;

(4) Spell of illness shall mean a continuous period as a hospital inpatient or successive periods as a hospital inpatient when the date of discharge and the following date of admission are less than sixty consecutive days apart; and

(5) Uninsured access coverage shall mean a policy of sickness and accident insurance or a contract for health care services covering individuals, with or without their dependents, issued by an insurer subject to the limitations and requirements in the act.

Source: Laws 1991, LB 419, § 31; Laws 2009, LB445, § 2.

44-5305 Policy or contract; eligibility.

(1) An uninsured access coverage policy or contract shall limit eligibility to individuals or families who are not eligible for medicare or any other medical assistance program, including, but not limited to, the program established pursuant to the Medical Assistance Act.

(2) The uninsured access coverage policy or contract shall allow a transfer to a designated type of individual policy or contract without evidence of insurability and without interruption in coverage subject to payment of premiums. Each uninsured access coverage policy or contract shall specify the type of individual policy or contract to which an insured person may transfer.

Source: Laws 1991, LB 419, § 33; Laws 2006, LB 1248, § 65; Laws 2009, LB445, § 3.

Cross References

Medical Assistance Act, see section 68-901.

44-5306 Policy or contract; eligibility; limitations.

(1) An individual or a family member shall not be eligible for initial or continued coverage under an uninsured access coverage policy or contract if he or she:

(a) Is eligible as an employee or dependent for group insurance coverage sponsored or maintained by an employer; or

(b) Is covered by any other type of hospital, surgical, or medical expense-incurred policy or health maintenance organization contract.

(2) An uninsured access coverage policy or contract may require evidence of insurability but shall not use underwriting guidelines that are more strict than those normally used by the insurer for its regular individual health insurance contracts.

Source: Laws 1991, LB 419, § 34; Laws 2009, LB445, § 4.

44-5307 Policy or contract; benefits required; coverage authorized; prohibitions.

(1) An uninsured access coverage policy or contract may include hospital-only and surgical-only benefits which shall mean:

(a) Inhospital benefits for not less than thirty continuous days nor more than ninety continuous days for each spell of illness; and

(b) Surgical benefits for both inpatient and outpatient surgery.

(2) An uninsured access coverage policy or contract may include prescription drug benefit coverage.

(3) An uninsured access coverage policy or contract may include preventative health care coverage, including, but not limited to, primary care physician visits, immunizations for adults and children, laboratory and X-ray procedures, and preventative cancer screenings such as mammograms, cervical cancer screenings, and noninvasive colorectal or prostate screenings.

(4) An uninsured access coverage policy or contract may not:

(a) Use a definition of spell of illness more restrictive than the definition found in section 44-5303; or

(b) Use a definition of preexisting condition more restrictive than the definition normally used by the insurer for its regular individual health insurance contracts.

(5) Every uninsured access coverage policy or contract shall provide that the benefit payment shall be accepted as payment in full by the provider and there shall be no deductible or coinsurance charged to the insured.

Source: Laws 1991, LB 419, § 35; Laws 2009, LB445, § 5.

ARTICLE 55

SURPLUS LINES INSURANCE

Section

44-5501 Act, how cited.

Sections 44-5501 to 44-5515 shall be known and may be cited as the Surplus Lines Insurance Act.

Source: Laws 1992, LB 1006, § 1; Laws 2007, LB117, § 21.

44-5502 Terms, defined.

For purposes of the Surplus Lines Insurance Act:

(1) Department means the Department of Insurance;

(2) Director means the Director of Insurance;

(3) Insurer has the same meaning as in section 44-103;

(4) Foreign, alien, admitted, and nonadmitted, when referring to insurers, has the same meanings as in section 44-103; and

(5) Industrial insured means an insured that:

(a) Procures the insurance of any risk or risks other than sickness and accident insurance and life and annuity contracts, has fifty full-time employees, and has aggregate annual premiums for insurance on all risks other than workers' compensation insurance that total at least one hundred thousand dollars; and

(b) Uses, to procure such insurance, the services of a salaried full-time employee who counsels or advises his or her employer regarding the insurance interests of the employer or the employer's subsidiaries or business affiliates, if the employee does not sell or solicit insurance or receive a commission.

Source: Laws 1992, LB 1006, § 2; Laws 2007, LB117, § 22.

44-5504 Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.

(1) No person, other than an industrial insured, shall place, procure, or effect insurance upon any risk located in this state in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3)(a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

Source: Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-140; Laws 1978, LB 836, § 2; Laws 1984, LB 801, § 47; Laws 1989, LB 92, § 30; R.S.Supp.,1990, § 44-140; Laws 1992, LB 1006, § 4; Laws 1999, LB 260, § 15; Laws 2002, LB 1139, § 37; Laws 2007, LB117, § 23.

44-5505 Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.

Each surplus lines licensee shall keep in the licensee's office a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy form issued by the licensee, (8) a copy of the written statement described in subdivision (3) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) the name and address of the insured, (10) a brief and general description of the risk or exposure insured and where located, (11) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and (12) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the licensee.

Source: Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-141; Laws 1978, LB 836, § 3; Laws 1989, LB 92, § 31; R.S.Supp.,1990, § 44-141; Laws 1992, LB 1006, § 5; Laws 2005, LB 119, § 20.

44-5508 Surplus lines licensee; solvency requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.

(1) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall ascertain the financial condition of each insurer before such licensee places any insurance with or procures any insurance from such insurer. If requested by the director, the licensee shall provide a copy of the current annual statement certified and sworn to by such insurer.

(2) No surplus lines licensee shall knowingly or without proper investigation place any insurance with or procure any insurance from any nonadmitted foreign or alien insurer that does not have surplus, capital, and reserves in amounts equal to or greater than the requirements of surplus, capital, and reserves placed on admitted insurers which write the same kinds of insurance.

(3) In addition to the requirements of subsection (2) of this section, no surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted alien insurer unless such insurer (a) maintains in the United States a trust fund in a qualified United States financial institution as defined in subsection (2) of section 44-416.08 in an amount not less than two million five hundred thousand dollars for the protection of policyholders in the United States, consisting of cash in United States currency, readily marketable securities, or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in subsection (1) of section 44-416.08, and such trust fund shall have an expiration date which at no time shall be less than five years, or (b) is approved by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners, and the director, in his or her discretion, has not independently determined such insurer to be in an unsound financial condition.

(4) No surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters unless such group maintains a trust fund of not less than fifty million dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group and such trust complies with the terms and conditions established in subsection (3) of this section for nonadmitted alien insurers.

(5) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

(6)(a) No nonadmitted foreign or alien insurer shall transact business under the act if it does not comply with the surplus, capital, and reserves requirements of subsection (2) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall transact business under the act if it does not comply with the requirements of subdivision (3)(a) or (b) of this section.

(c) No nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters shall transact business under the act if it does not comply with the requirements of subsection (4) of this section.

Source: Laws 1913, c. 154, § 26, p. 410; R.S.1913, § 3162; Laws 1919, c. 190, tit. V, art. III, § 19, p. 589; C.S.1922, § 7763; C.S.1929, § 44-219; R.S.1943, § 44-147; Laws 1951, c. 135, § 2, p. 558; Laws 1971, LB 757, § 1; Laws 1977, LB 40, § 230; Laws 1978, LB 836, § 6; Laws 1989, LB 92, § 33; R.S.Supp.,1990, § 44-147; Laws 1992, LB 1006, § 8; Laws 1994, LB 978, § 31; Laws 2005, LB 119, § 21.

44-5515 Taxes; form.

Every industrial insured shall annually, on or before February 15, pay to the department a tax of three percent on the total gross amount of insurance premiums for policies procured through nonadmitted insurers. Every industrial insured shall pay the fire insurance tax prescribed in section 81-523. The department shall prescribe a form for an industrial insured tax filing.

Source: Laws 2007, LB117, § 24.

ARTICLE 59

INSURERS EXAMINATION

Section
44-5904. Authority, scope, and scheduling of examinations.
44-5905. Conduct of examinations; record retention requirements.

44-5904 Authority, scope, and scheduling of examinations.

(1) The director or any of his or her examiners may conduct an examination under the Insurers Examination Act of any company incorporated in this state or in any other state or country admitted to or applying for admission to transact business in this state as often as the director in his or her sole discretion deems appropriate but shall at a minimum conduct an examination of every domestic insurer not less frequently than once every five years. In

scheduling and determining the nature, scope, and frequency of the examination of a company, the director shall consider such matters as the results of financial statement analyses and ratios, changes in the company's management or ownership, actuarial opinions, reports of independent certified public accountants, the company's ability to meet and fulfill its obligations, the company's compliance with provisions of law, other facts relating to the company's business methods, the company's management and its dealings with its policyholders, and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the director conducts an examination under this section.

(2) For purposes of completing an examination of any company under the act, the director may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the company.

Source: Laws 1993, LB 583, § 4; Laws 1998, LB 1035, § 12; Laws 2009, LB192, § 9.

44-5905 Conduct of examinations; record retention requirements.

(1) Upon determining that an examination should be conducted, the director or his or her designee shall appoint one or more examiners to conduct the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The director may also employ such other guidelines or procedures as the director may deem appropriate.

(2)(a) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) of this section timely, convenient, and free access to all books, records, accounts, papers, documents, and computer or other recordings relating to the property, assets, business, and affairs of the company being examined.

(b)(i)(A) Every company or person subject to the Insurers Examination Act shall retain all books, records, accounts, papers, documents, and computer or other recordings relating to the property, assets, financial accounts, and business of such company or person in a manner that permits examination of such books, records, accounts, papers, documents, and computer or other recordings for five years, or until the period of time in which the transaction took place has undergone a financial examination by the director, whichever is later, following the completion of a transaction relating to the property, assets, financial accounts, and business of such company or person.

(B) Every company or person subject to the act shall retain market conduct records for five years following the completion of a transaction relating to the insurance business and affairs of such company or person. For purposes of this subdivision, market conduct records means all books, records, accounts, papers, documents, and computer or other recordings relating to transactions with insureds, certificate holders, claimants, insurance producers, other insurers, subrogees, and subrogors and recordings related to its trade practices, underwriting, rate and form practices, advertising, regulatory matters, and other affairs of such company or person.

(ii) The books, records, accounts, papers, documents, and computer or other recordings described in subdivisions (2)(b)(i)(A) and (B) of this section and maintained in electronic, computer, micrographic, or other form shall be maintained in a form capable of accurate duplication on paper.

(c) The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the director's jurisdiction. Any such proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the Administrative Procedure Act.

(d) For purposes of this subsection, officers, directors, employees, and agents shall include general agents, managing agents, attorneys in fact, organizers, promoters, loss adjusters, and any persons having a contract, written or oral, pertaining to the management or control of a company or any function thereof.

(3) The director or any of his or her examiners shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in the district court with mileage to be computed at the rate provided in section 81-1176, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

(4) When conducting an examination under the Insurers Examination Act, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, loss-reserve specialists, or other professionals and specialists, the cost of which shall be borne by the company which is the subject of the examination.

(5) Nothing in the act shall be construed to limit the director's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) Nothing contained in the act shall be construed to limit the director's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the director may, in his or her sole discretion, deem appropriate.

Source: Laws 1993, LB 583, § 5; Laws 1999, LB 259, § 12; Laws 2009, LB192, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 60
INSURERS RISK-BASED CAPITAL ACT

Section
44-6009. Negative trend, with respect to a life and health insurer, defined.
44-6016. Company action level event.

44-6009 Negative trend, with respect to a life and health insurer, defined.

Negative trend, with respect to a life and health insurer, means a negative trend over a period of time, as determined in accordance with the trend test calculation included in the life risk-based capital instructions.

Source: Laws 1993, LB 583, § 21; Laws 1994, LB 978, § 36; Laws 1999, LB 258, § 14; Laws 2008, LB855, § 29.

44-6016 Company action level event.

(1) Company action level event means any of the following events:

(a) The filing of a risk-based capital report by an insurer or a health organization which indicates that:

(i) The insurer's or health organization's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital;

(ii) If a life and health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative trend; or

(iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions;

(b) The notification by the director to the insurer or health organization of an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section unless the insurer or health organization challenges the adjusted risk-based capital report under section 44-6020; or

(c) If, pursuant to section 44-6020, the insurer or health organization challenges an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(2) In the event of a company action level event, the insurer or health organization shall prepare and submit to the director a risk-based capital plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer or health organization intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's or health organization's financial results in the current year and at least the four succeeding years in the case of an insurer or at least the two succeeding years in the case of a health organization, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identify the key assumptions impacting the insurer's or health organization's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's or health organization's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, and mix of business and use of reinsurance, if any, in each case.

(3) The risk-based capital plan shall be submitted:

(a) Within forty-five days after the occurrence of the company action level event; or

(b) If the insurer or health organization challenges an adjusted risk-based capital report pursuant to section 44-6020, within forty-five days after the notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(4) Within sixty days after the submission by an insurer or a health organization of a risk-based capital plan to the director, the director shall notify the insurer or health organization whether the risk-based capital plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the director determines that the risk-based capital plan is unsatisfactory, the notification to the insurer or health organization shall set forth the reasons for the determination and may set forth proposed revisions which will render the risk-based capital plan satisfactory in the judgment of the director. Upon notification from the director, the insurer or health organization shall prepare a revised risk-based capital plan which may incorporate by reference any revisions proposed by the director. The insurer or health organization shall submit the revised risk-based capital plan to the director:

(a) Within forty-five days after the notification from the director; or

(b) If the insurer or health organization challenges the notification from the director under section 44-6020, within forty-five days after a notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(5) In the event of a notification by the director to an insurer or a health organization that the insurer's or health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the director may, at the director's discretion and subject to the insurer's or health organization's right to a hearing under section 44-6020, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer or domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the director shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner of any state in which the insurer or health organization is authorized to do business if:

(a) Such state has a law substantially similar to subsection (1) of section 44-6021; and

(b) The insurance commissioner of such state has notified the insurer or health organization of its request for the filing in writing, in which case the insurer or health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan in such state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(ii) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection (3) or (4) of this section.

Source: Laws 1993, LB 583, § 28; Laws 1994, LB 978, § 38; Laws 1999, LB 258, § 21; Laws 2008, LB855, § 30.

ARTICLE 61

DEMUTUALIZATION AND REORGANIZATION OF MUTUAL COMPANIES

(b) MUTUAL INSURANCE HOLDING COMPANY ACT

(b) MUTUAL INSURANCE HOLDING COMPANY ACT

44-6122 Act, how cited.

Sections 44-6122 to 44-6143 shall be known and may be cited as the Mutual Insurance Holding Company Act.

Source: Laws 1997, LB 740, § 1; Laws 1999, LB 259, § 13; Laws 2005, LB 119, § 22.

44-6125 Domestic mutual insurer; foreign insurer; transfer domicile; reorganization authorized; effect; holding company; treatment.

(1) A domestic mutual insurer, upon approval of the director, may reorganize (a) by forming a mutual insurance holding company, (b) by merging its policyholders' membership interests into the mutual insurance holding company, and (c) by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(2) A domestic mutual insurer, upon the approval of the director, may reorganize by merging its policyholders' membership interests into an existing mutual insurance holding company formed under subsection (1) of this section and by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(3) All of the initial shares of the capital stock of a reorganized stock insurer which has reorganized as described in subsection (1) or (2) of this section shall

be issued to the mutual insurance holding company or to one or more intermediate stock holding companies.

(4) Policyholders of a domestic mutual insurer which has reorganized as described in subsection (1) or (2) of this section shall be members of the mutual insurance holding company and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall provide its members with the same membership rights as were provided to policyholders of the mutual insurer immediately prior to reorganization. The reorganization shall not reduce, limit, or affect the number or identity of the policyholders who may become members of the mutual insurance holding company or secure for individuals comprising management any unfair advantage through or connected with the reorganization.

(5) If an insurer which is organized under the laws of another state transfers its domicile to this state in accordance with section 44-161 and is a direct or indirect subsidiary of a mutual insurance holding company organized under the laws of such other state, then, in connection with the transfer of the domicile of such insurer, upon approval of the director of a plan of merger and transfer, the foreign mutual insurance holding company may form a mutual insurance holding company under this section, and the foreign mutual insurance holding company may merge into such domestic mutual insurance holding company simultaneously with the transfer of domicile of the insurer to this state. Until the merger takes effect, the foreign mutual insurance holding company shall be the sole member of the domestic mutual insurance holding company. When the merger takes effect, the separate existence of the foreign mutual insurance holding company shall cease, the domestic mutual insurance holding company shall survive and have all the assets and liabilities formerly held by the foreign mutual insurance holding company, all of the members of the foreign mutual insurance holding company shall become members of the domestic mutual insurance holding company, policyholders of the insurer shall be members of the domestic mutual insurance holding company, and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the domestic mutual insurance holding company. After the transfer and merger take effect, for purposes of the Mutual Insurance Holding Company Act, the insurer shall be deemed to be a reorganized stock insurer. If the foreign mutual insurance holding company owns a majority of the voting stock of a stock holding company organized under the laws of another state that in turn owns all of the voting stock of the insurer, then the plan of merger and transfer may provide that the stock holding company shall continue as a corporation organized under the laws of the other state.

(6)(a) A mutual insurance holding company or any intermediate stock holding company formed under the Mutual Insurance Holding Company Act shall not be authorized to transact the business of insurance.

(b) A mutual insurance holding company formed under the act shall not issue stock.

(c) The director shall have jurisdiction over a mutual insurance holding company and any intermediate stock holding company to ensure that policyholder interests are protected.

(d) A mutual insurance holding company and any intermediate stock holding company shall be treated as domestic insurers subject to the Insurers Demutu-

alization Act, the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, Chapter 44, article 2, and section 44-301, except that a foreign intermediate stock holding company shall not be subject to Chapter 44, article 2, and section 44-301.

(e) Except with the approval of the director, the aggregate pledges and encumbrances of a mutual insurance holding company's assets shall not affect more than forty-nine percent of the mutual insurance holding company's stock in an intermediate stock holding company or a reorganized stock insurer.

(f) At least fifty percent of the net worth of a mutual insurance holding company, as determined by generally accepted accounting practices, shall be invested in insurers or any other subsidiaries or investments authorized by the Insurance Holding Company System Act.

(g) If any proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act is brought against a reorganized stock insurer, the mutual insurance holding company and intermediate stock holding company shall become parties to the proceedings. All of the assets of the mutual insurance holding company are deemed assets of the estate of the reorganized stock insurer to the extent necessary to satisfy policy claims against the reorganized stock insurer.

(h) No distribution to members of a mutual insurance holding company may occur without prior written approval of the director and only upon the director's satisfaction that such distribution is fair and equitable to policyholders as members of the mutual insurance holding company.

(i) No solicitation for the sale of the stock of an intermediate stock holding company or a reorganized stock insurer may be made without the director's prior written approval.

(j) A mutual insurance holding company or an intermediate stock holding company shall not voluntarily dissolve without the approval of the director.

Source: Laws 1997, LB 740, § 4; Laws 2004, LB 1047, § 20; Laws 2005, LB 119, § 23.

Cross References

Insurance Holding Company System Act, see section 44-2120.
Insurers Demutualization Act, see section 44-6101.
Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

44-6143 Expansion of business; activities authorized; requirements.

(1) A mutual insurance holding company or an intermediate stock holding company may engage in actions and activities related to expanding the business of any company into other insurance, insurance-related, and financial services businesses. Any such expansion may be accomplished through acquisition, merger, consolidation, strategic alliance, joint venture, or other business combination. A mutual insurance holding company may:

(a) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company formed under the laws of the State of Nebraska or any similar entity or organization formed under the laws of any other state;

(b) Either alone or together with one or more intermediate stock holding companies, or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes as a

mutual insurance holding company under the laws of the State of Nebraska or the laws of its state of organization;

(c) Together with one or more of its stock insurance company subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company;

(d) Acquire a stock insurance company through the merger of such stock insurance subsidiary with a stock insurance company or intermediate stock insurance company subsidiary of the mutual insurance holding company; or

(e) Acquire the stock or assets of any other person to the same extent as would be permitted for a mutual insurance company.

(2) A plan and agreement for merger or consolidation in accordance with subsection (1) of this section shall be submitted to and approved by two-thirds of the members of each domestic mutual insurance holding company or mutual insurance company involved in the merger or consolidation who vote either in person or by proxy thereon at meetings called for such purposes pursuant to such reasonable notice and procedure as has been approved by the director.

(3) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the director and approved by the director.

(4) All of the initial shares of the capital stock of the reorganized stock insurer shall be issued either to the mutual insurance holding company or to an intermediate stock holding company that is a subsidiary of the mutual insurance holding company. The membership interests of the policyholders of the reorganized stock insurer shall become membership interests in the mutual insurance holding company in accordance with the plan and agreement of merger or consolidation. Policyholders of the reorganized stock insurer shall be members of the mutual insurance holding company in accordance with the plan and agreement of merger or consolidation and the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times directly or indirectly own a majority of the voting shares of the capital stock of any reorganized stock insurer.

Source: Laws 2005, LB 119, § 24.

ARTICLE 64

UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE

Section
44-6413. Uninsured and underinsured motorist coverages; exceptions; exclusions; requirements; rules and regulations.

44-6413 Uninsured and underinsured motorist coverages; exceptions; exclusions; requirements; rules and regulations.

(1) The uninsured and underinsured motorist coverages provided in the Uninsured and Underinsured Motorist Insurance Coverage Act shall not apply to:

(a) Bodily injury, sickness, disease, or death of the insured with respect to which the insured or his or her representative makes, without the written consent of the insurer, any settlement with or obtains any judgment against any

person who may be legally liable for any injuries if such settlement adversely affects the rights of the insurer, except that this subdivision shall not apply to underinsured motorist coverage when the insured has given notice to the insurer, in compliance with subsection (2) of section 44-6412, and the insurer has failed to make the required payment to protect its right of subrogation;

(b) Bodily injury, sickness, disease, or death of an insured while occupying a vehicle owned by, but not insured by, the named insured or a spouse or relative residing with the named insured;

(c) Bodily injury, sickness, disease, or death of an insured while occupying an owned vehicle which is used as a public or livery conveyance and which is not insured as such;

(d) Bodily injury, sickness, disease, or death of an insured through being struck by a vehicle owned by the named insured or a spouse or relative residing with the named insured; and

(e) Bodily injury, sickness, disease, or death of the insured with respect to which the applicable statute of limitations has expired on the insured's claim against the uninsured or underinsured motorist.

(2) Insurers providing motor vehicle liability insurance coverage on an excess or umbrella basis or incidental to some other basic coverage shall not be required to offer, provide, or make available coverage conforming to the Uninsured and Underinsured Motorist Insurance Coverage Act.

(3) An insurer may make underinsured motorist coverage a part of uninsured motorist coverage.

(4) Nothing in the Uninsured and Underinsured Motorist Insurance Coverage Act shall be construed to prevent an insurer from offering, making available, or providing coverage under terms and conditions more favorable to its insured or in limits higher than are required by the act.

(5) No policy subject to the Uninsured and Underinsured Motorist Insurance Coverage Act shall define insured, for purposes of the uninsured and underinsured coverages provided in the act, so as to exclude any person occupying the insured motor vehicle with the express or implied permission of an insured.

(6) The Director of Insurance shall adopt and promulgate rules and regulations as are necessary to provide that the language relating to coverages described in the Uninsured and Underinsured Motorist Insurance Coverage Act is not unfair, inequitable, misleading, or deceptive and does not encourage misrepresentation of the coverage.

Source: Laws 1986, LB 573, § 12; R.S.1943, (1988), § 60-582; Laws 1994, LB 1074, § 13; Laws 2009, LB152, § 1.

ARTICLE 65

INTERSTATE INSURANCE RECEIVERSHIP COMPACT

Section
44-6501. Repealed. Laws 2006, LB 875, § 24.

44-6501 Repealed. Laws 2006, LB 875, § 24.

ARTICLE 66
INSURANCE FRAUD

Section
44-6603. Terms, defined.
44-6604. Fraudulent insurance acts; enumerated.

44-6603 Terms, defined.

For purposes of the Insurance Fraud Act:

(1) Department means the Department of Insurance;

(2) Director means the Director of Insurance;

(3) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the director. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, discount medical plan organizations, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; and

(4) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

Source: Laws 1995, LB 385, § 3; Laws 1997, LB 272, § 2; Laws 2002, LB 547, § 2; Laws 2008, LB855, § 31.

Cross References

Comprehensive Health Insurance Pool Act, see section 44-4201.
Intergovernmental Risk Management Act, see section 44-4301.

44-6604 Fraudulent insurance acts; enumerated.

For purposes of the Insurance Fraud Act, a person or entity commits a fraudulent insurance act if he or she:

(1) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(2) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(3) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder or a covered person in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(4) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(5) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(6) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(7) Knowingly and with intent to defraud or deceive issues or possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(8) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the department;

(9) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance;

(10) Knowingly and with the intent to defraud or deceive provides false, incomplete, or misleading information to an insurer concerning the number, location, or classification of employees for the purpose of lessening or reducing the premium otherwise chargeable for workers' compensation insurance coverage;

(11) Willfully operates as or aids and abets another operating as a discount medical plan organization in violation of subsection (1) of section 44-8306; or

(12) Willfully collects fees for purported membership in a discount medical plan but purposefully fails to provide the promised benefits.

Source: Laws 1995, LB 385, § 4; Laws 1997, LB 272, § 3; Laws 2002, LB 547, § 3; Laws 2008, LB855, § 32; Laws 2009, LB208, § 2.

ARTICLE 70

HEALTH CARE PROFESSIONAL CREDENTIALING VERIFICATION ACT

Section
44-7006. Health carrier; credentialing verification duties.

44-7006 Health carrier; credentialing verification duties.

(1) A health carrier shall:

(a) Establish written policies and procedures for credentialing verification of all health care professionals with whom the health carrier contracts and apply these standards consistently;

(b) Verify the credentials of a health care professional before entering into a contract with that health care professional. The medical director of the health carrier or other designated health care professional shall have responsibility for, and shall participate in, credentialing verification;

(c) Establish a credentialing verification committee consisting of licensed physicians and other health care professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification;

(d) Make available for review by the applying health care professional upon written request all application and credentialing verification policies and procedures;

(e) Retain all records and documents relating to a health care professional's credentialing verification process for at least five years; and

(f) Keep confidential all information obtained in the credentialing verification process except as otherwise provided by law.

(2) Nothing in the Health Care Professional Credentialing Verification Act shall be construed to require a health carrier to select a provider as a participating provider solely because the provider meets the health carrier's credentialing verification standards or to prevent a health carrier from utilizing separate or additional criteria in selecting the health care professionals with whom it contracts.

(3) The policies and procedures for credentialing verification shall be available for review by the director, and, in the case of a health maintenance organization, shall also be available for review by the chief medical officer, if one is appointed pursuant to section 81-3115, and if not, then the Director of Public Health.

Source: Laws 1998, LB 1162, § 31; Laws 2007, LB296, § 198.

ARTICLE 71

MANAGED CARE PLAN NETWORK ADEQUACY ACT

Section
44-7107. Intermediaries.

44-7107 Intermediaries.

(1) A contract between a health carrier and an intermediary shall satisfy all the requirements contained in this section.

(2)(a) Intermediaries and participating providers with whom they contract shall comply with all the applicable requirements of section 44-7106.

(b) A health carrier's statutory responsibility to monitor the offering of covered benefits to covered persons shall not be delegated or assigned to the intermediary.

(c) A health carrier shall have the right to approve or disapprove participation status of a subcontracted provider in its own or a contracted network for the purpose of delivering covered benefits to the health carrier's covered persons.

(d) A health carrier shall maintain copies of all intermediary health care subcontracts at its principal place of business in the state, or ensure that it has access to all intermediary subcontracts, including the right to make copies to facilitate regulatory review, upon twenty days' prior written notice from the health carrier. A health carrier may meet the requirements of this subdivision by maintaining a copy of the intermediary health care subcontract forms used by its intermediaries, and if the health carrier does so, the health carrier shall

also maintain a copy of any portion of an intermediary health care subcontract which substantially differs from the intermediary health care subcontract form in subject areas other than reimbursement.

(e) If applicable, an intermediary shall transmit utilization documentation and claims paid documentation to the health carrier. The health carrier shall monitor the timeliness and appropriateness of payments made to providers and health care services received by covered persons.

(f) If applicable, an intermediary shall maintain the books, records, financial information, and documentation of health care services provided to covered persons at its principal place of business in the state and preserve them for five years in a manner that facilitates regulatory review.

(g) An intermediary shall allow the director and a health maintenance organization shall allow the director and the Department of Health and Human Services access to the intermediary's books, records, financial information, and any documentation of health care services provided to covered persons, as necessary to determine compliance with the Managed Care Plan Network Adequacy Act.

(h) A health carrier shall have the right, in the event of the intermediary's insolvency, to require the assignment to the health carrier of the provisions of a provider's contract addressing the provider's obligation to furnish covered services.

Source: Laws 1998, LB 1162, § 45; Laws 2007, LB296, § 199.

ARTICLE 72

QUALITY ASSESSMENT AND IMPROVEMENT ACT

Section
44-7206. Quality assessment; infrastructure and disclosure systems.

44-7206 Quality assessment; infrastructure and disclosure systems.

A health carrier that provides managed care plans shall develop and maintain the infrastructure and disclosure systems necessary to measure the quality of health care services provided to covered persons on a regular basis and appropriate to the types of managed care plans offered by the health carrier. A health carrier shall:

(1) Establish a system designed to assess the quality of health care provided to covered persons and appropriate to the types of managed care plans offered by the health carrier. The system shall include systematic collection, analysis, and reporting of relevant data in accordance with statutory and regulatory requirements;

(2) Communicate findings in a timely manner to applicable regulatory agencies, providers, and consumers as provided in section 44-7209;

(3) Report to the appropriate licensing authority any persistent pattern of problematic care provided by a provider that is sufficient to cause the health carrier to terminate or suspend contractual arrangements with the provider. A health carrier acting in good faith shall be granted immunity from any cause of action under state law in making the report; and

(4) Develop a written description of the quality assessment program available for review by the director, which shall include a signed certification by a corporate officer of the health carrier that the filing meets the requirements of

the Quality Assessment and Improvement Act. The written description of the quality assessment program of a health maintenance organization shall also be available for review by the Department of Health and Human Services.

Source: Laws 1998, LB 1162, § 56; Laws 2007, LB296, § 200.

ARTICLE 73

HEALTH CARRIER GRIEVANCE PROCEDURE ACT

Section
44-7306. Grievance register.

44-7306 Grievance register.

(1) A health carrier shall maintain in a grievance register written records to document all grievances received during a calendar year. A request for a first-level review of an adverse determination shall be processed in compliance with section 44-7308 but not considered a grievance for purposes of the grievance register unless such request includes a written grievance. A request for a second-level review of an adverse determination shall be considered a grievance for purposes of the grievance register. For each grievance required to be recorded in the grievance register, the grievance register shall contain, at a minimum, the following information:

(a) A general description of the reason for the grievance;

(b) Date received;

(c) Date of each review or hearing;

(d) Resolution at each level of the grievance;

(e) Date of resolution at each level; and

(f) Name of the covered person for whom the grievance was filed.

(2) The grievance register shall be maintained in a manner that is reasonably clear and accessible to the director. A grievance register maintained by a health maintenance organization shall also be accessible to the Department of Health and Human Services.

(3) A health carrier shall retain the grievance register compiled for a calendar year for the longer of three years or until the director has adopted a final report of an examination that contains a review of the grievance register for that calendar year.

Source: Laws 1998, LB 1162, § 71; Laws 2007, LB296, § 201.

ARTICLE 75

PROPERTY AND CASUALTY INSURANCE RATE AND FORM ACT

Section
44-7504. Terms, defined.
44-7506. Rating systems and prospective loss costs; filing required.
44-7508.01. Policy forms and related rules of attachment; filing; contents; failure to file; effect.
44-7508.02. Policy forms; filing; director; powers and duties.
44-7509. Premium adjustments.
44-7511. Rating systems; filing requirements for lines subject to prior approval; hearings.
44-7513. Policy form filings.
44-7515. Exemption from the requirement for insurers to use filed rates and policy forms for certain commercial policyholders; eligibility for professional employer organizations.

44-7504 Terms, defined.

For purposes of the Property and Casualty Insurance Rate and Form Act:

(1) Advisory organization means any entity, including its affiliates or subsidiaries, which (a) has majority ownership or control by two or more insurers and assists two or more insurers in activities related to ratemaking, the promulgation of policy forms, or related matters or (b) makes the same prospective loss cost or policy form filings on behalf of or to be available for two or more insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Advisory organization does not include joint reinsurance pools, joint underwriting pools, or insurers engaged in joint underwriting;

(2) Classification means the process of grouping insureds with similar loss or expense characteristics so that differences in losses and expenses may be recognized;

(3) Client means client as defined in section 48-2702;

(4) Director means the Director of Insurance;

(5) Exempt commercial policyholder means an entity to which specific aspects of rate or policy form regulation do not apply or have been relaxed in accordance with rules and regulations adopted and promulgated pursuant to section 44-7515;

(6) Expense means that portion of a rate attributable to acquisition, field supervision, collection expense, general expense, taxes, licenses, and fees. Expense does not include loss adjustment expense;

(7) Experience rating plan means a rating formula and related procedures that use past loss experience of an individual policyholder to forecast future losses by measuring the policyholder's loss experience against the expected losses for policyholders in that classification to produce a prospective premium credit, debit, or unity modification;

(8) Joint reinsurance pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the reinsurance of risks written by one or more member insurers and reinsured by one or more other member insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint reinsurance pool may operate through an association, syndicate, or other arrangement;

(9) Joint underwriting means a voluntary arrangement established on an individual risk basis by which two or more insurers jointly contract to provide coverage for an insured. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Joint underwriting does not include any arrangement by which the participants are reinsuring the direct obligation of another risk-assuming entity;

(10) Joint underwriting pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the sharing of risks written as their direct obligations according to a predetermined basis and the insurance remains the direct obligation of the pool participants. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint underwriting pool may operate through an association, syndicate, or other arrangement;

(11) Loss adjustment expense means the expense incurred by an insurer in the course of settling claims;

(12) Master policy means master policy as defined in section 48-2702;

(13) Multiple coordinated policy means multiple coordinated policy as defined in section 48-2702;

(14) Policy form means all policies, certificates, or other contracts providing insurance coverage. Policy form includes bonds and includes riders, endorsements, or other amendments to the policy form;

(15) Premium means the cost of insurance to the policyholder after all audit adjustments have been made and any dividends payable have been subtracted;

(16) Professional employer organization means professional employer organization as defined in section 48-2702;

(17) Prospective loss cost means that portion of a rate intended to provide for expected losses and loss adjustment expenses. Prospective loss costs may provide for anticipated special assessments. Prospective loss costs do not include provisions for profits, dividends, or expenses other than loss adjustment expenses;

(18) Rating system means the information needed to determine the applicable rate or premium including rates, any manual or plan of rates, classifications, rating schedules, minimum premiums, policy fees, payment plans, rating plans or rules, anniversary rating date rules, and other similar information. Rating system does not include dividend rating plans or other provisions for the possible payment of dividends if such dividends are declared by the insurer's board of directors and are not guaranteed;

(19) Special assessments means guaranty fund assessments made pursuant to section 44-2407, Workers' Compensation Trust Fund assessments made pursuant to section 48-162.02, residual market assessments made pursuant to section 44-3,158 or 44-7528, and similar assessments. Special assessments are not expenses or losses;

(20) Statistical agent means an entity that, for the purpose of fulfilling the statistical reporting obligations of two or more insurers under the act, collects or compiles statistics from two or more insurers or provides reports developed from these statistics to the director. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer; and

(21) Supporting information means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer, the interpretation of any other data relied upon by the filer, descriptions of methods used in developing a rating system, and any other information required by the director to be filed.

Source: Laws 2000, LB 1119, § 4; Laws 2001, LB 4, § 1; Laws 2007, LB117, § 25; Laws 2010, LB579, § 12.
Operative date July 15, 2010.

44-7506 Rating systems and prospective loss costs; filing required.

(1) All rating systems and prospective loss costs shall be filed with the director in accordance with section 44-7508, except that filings for the following shall be filed in accordance with sections 44-7510 and 44-7511:

(a) Filings made by advisory organizations;

(b) Medical professional liability insurance;

(c) Insurance in noncompetitive markets as determined pursuant to section 44-7507;

(d) Liability and physical damage coverages relating to the rental of private passenger automobiles on a nonfleet basis;

(e) Insurance written by joint underwriting pools or joint reinsurance pools;

(f) Insurance written in an assigned risk plan; and

(g) Insurance covering risks of a personal nature written for business entities if the costs for the insurance are charged to individuals. This does not include coverage provided without a separate charge by business entities for their customers.

(2)(a) If the director, after notice and hearing in accordance with the Administrative Procedure Act, finds that an insurer has made filings pursuant to section 44-7508 that have failed to meet the filing standards contained in that section with such frequency as to indicate a general business practice that disregards the requirements of that section, the director shall order that the insurer's filings be made subject to the requirements of sections 44-7510 and 44-7511.

(b) Upon application by an insurer affected by an order issued pursuant to subdivision (2)(a) of this section, demonstrating that its filings made subsequent to the order have been in compliance with section 44-7508 without the need for the director to request that the original filings be amended, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(c) For insurers whose rating system filings that would otherwise be subject to this section have been made subject to the prior approval requirements of section 44-7511 through the application of this subsection, the percentage rating flexibilities provided in section 44-7509 shall apply to such rating system filings made by such insurers once the rating system filing has been approved pursuant to section 44-7511.

Source: Laws 2000, LB 1119, § 6; Laws 2005, LB 119, § 25.

Cross References

Administrative Procedure Act, see section 84-920.

44-7508.01 Policy forms and related rules of attachment; filing; contents; failure to file; effect.

(1) All policy forms and related rules of attachment shall be filed with the director in accordance with section 44-7508.02, except that an insurer may at its option file policy forms and related rules of attachment in accordance with section 44-7513 and filings for the following shall be filed in accordance with section 44-7513:

(a) Filings made by advisory organizations;

(b) Workers' compensation and employers liability insurance;

(c) Excess workers' compensation and employers liability insurance;

(d) Medical professional liability insurance;

(e) Insurance in noncompetitive markets as determined pursuant to section 44-7507;

(f) Liability and physical damage coverages relating to the rental of private passenger automobiles on a nonfleet basis;

(g) Insurance written by joint underwriting pools or joint reinsurance pools;

(h) Insurance written in an assigned risk plan; and

(i) Insurance covering risks of a personal nature written for business entities if the costs for the insurance are charged to individuals. This does not include coverage provided without a separate charge by business entities for their customers.

(2)(a) If the director, after notice and hearing in accordance with the Administrative Procedure Act, finds that an insurer has made filings pursuant to section 44-7508.02 that have failed to meet the filing standards contained in such section with such frequency as to indicate a general business practice that disregards the requirements of such section or finds that the insurer committed one or more egregious acts relating to the filing standards, the director shall order that the insurer's filings be made subject to the requirements of section 44-7513.

(b) Upon application by an insurer affected by an order issued pursuant to subdivision (2)(a) of this section demonstrating that its filings made subsequent to the order have been in compliance with section 44-7508.02 without the need for the director to request that the original filings be amended, the director may vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

Source: Laws 2003, LB 216, § 19; Laws 2005, LB 119, § 26.

Cross References

Administrative Procedure Act, see section 84-920.

44-7508.02 Policy forms; filing; director; powers and duties.

(1) For policy forms to which this section applies as provided in section 44-7508.01, each insurer shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. For policy forms to which this section applies, no insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act except as provided in subsection (10) or (11) of this section or as provided by rules and regulations adopted and promulgated pursuant to section 44-7514 or 44-7515.

(2) Every filing shall state its effective date, which shall not be prior to the date that the director receives such filing.

(3) Every policy form filing shall explain the intended use of such policy forms. Filings shall include a list of policy forms that will be replaced when the approval of a filing will result in the replacement of previously approved policy forms. In addition, insurers shall maintain listings of policy forms that have been filed so that such listings can be provided upon request.

(4) The director shall acknowledge receipt of a policy form filing as soon as practical. A review of the filing by the director is not required to issue this acknowledgment, and acknowledgment shall not constitute an approval by the director.

(5) The director may review a policy form filing at any time after it has been made. The director shall review a policy form filing for insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs, within thirty days after the filing has been made. Following such review, the director shall disapprove a filing that contains provisions, exceptions, or conditions that: (a) Are unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy; (b) are written so as to encourage the misrepresentation of coverage; (c) fail to reasonably provide the general coverage for policies of that type; (d) fail to comply with the provisions or the intent of the laws of this state; or (e) would provide coverage contrary to the public interest.

(6) If, within thirty days after its receipt, the director disapproves a filing that requires disapproval pursuant to subsection (5) of this section, then a written disapproval notice shall be sent to the insurer. The disapproval notice shall specify in what respects the filing fails to meet these requirements. Upon receipt of the notice of disapproval, the insurer shall cease use of the filing as soon as practical but may use the form for policies that have already been issued or when pending coverage proposals are outstanding.

(7) If, within thirty days after its receipt, the director requests additional information to complete review of a policy form filing, the thirty-day review period allowed in subsection (6) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may disapprove the filing based on the insurer's failure to provide the requested information. Disapproval shall be by written notice sent to the insurer ordering discontinuance of the filing within thirty days after the date of notice.

(8) An insurer whose filing is disapproved pursuant to subsection (6) of this section may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(9) An insurer may authorize the director to accept policy form filings made on its behalf by an advisory organization.

(10)(a) Subject to the requirements of this subsection, policy forms unique in character and designed for and used with regard to an individual risk under common ownership subject to the rate filing provisions of section 44-7508 shall be exempt from subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than thirty days after the effective date of the policy using unfiled provisions, the insurer shall provide the prospective insured with a written listing of the policy forms that have not been filed with the director. This requirement does not apply to renewals using the same unfiled policy forms.

(c) A policy form that has been used in this state or elsewhere by the insurer for another risk shall not be subject to the exemption provided by this subsection, except that an insurer may use a policy form previously developed for a single risk for a second risk if the policy form is filed within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply to policy forms that, prior to their use by the insurer, had been filed by an advisory organization in this state or had been filed by the insurer in any jurisdiction, regardless of whether approval was received.

(e) The director may by rule and regulation or by order make specific restrictions relating to the exemption provided by this subsection and may require the informational filing of policy forms subject to such exemption within a reasonable time after their use. Any such informational filings specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(11) The director may by rule and regulation suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which policy forms cannot practicably be filed before they are used. The director may examine insurers as is necessary to ascertain whether any policy forms affected by such rules and regulations meet the standards contained in the Property and Casualty Insurance Rate and Form Act.

(12) If, at any time after the expiration of the review period provided by subsection (6) of this section or any extension thereof, the director finds that a policy form, attachment rule, or modification thereof does not meet or no longer meets the requirements of subsection (5) of this section, the director shall hold a hearing in accordance with section 44-7532.

(13) Any insured aggrieved with respect to any policy form filing subject to this section may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(14) If, after a hearing held pursuant to subsection (12) or (13) of this section, the director finds that a filing does not meet the requirements of subsection (5) of this section, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such policy form or attachment rule shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Source: Laws 2003, LB 216, § 21; Laws 2005, LB 119, § 27; Laws 2008, LB855, § 49.

44-7509 Premium adjustments.

(1) For medical professional liability insurance and for insurance subject to section 44-7508, insurers may increase or decrease premiums on an individual risk basis up to forty percent based on any factor except:

(a) The rate adjustment cannot be based upon the race, creed, national origin, or religion of the insured;

(b) The rate adjustment cannot violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act; and

(c) The rate adjustment cannot apply to (i) insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs or (ii) insurance covering farms and ranches, including crop insurance.

(2) If the director finds after a hearing that (a) the utilization of this section by the insurance industry has produced a significant number of rate modifications at or near the upper limit and at the lower limit of the allowable range of modification and (b) the modifiers at and near the upper and lower limits of the allowable range of modification appear to be predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, broaden the range of plus or minus forty percent for any line or type of insurance subject to section 44-7508.

(3) If the director finds after a hearing that modifiers at or near the upper or lower limits of the allowable range of modification are not predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, reduce the range of plus or minus forty percent for any line or type of insurance subject to section 44-7508, but such reduction shall not be to less than plus or minus twenty-five percent.

Source: Laws 2000, LB 1119, § 9; Laws 2002, LB 1139, § 50; Laws 2005, LB 119, § 28.

Cross References

Unfair Discrimination Against Subjects of Abuse in Insurance Act, see section 44-7401.

44-7511 Rating systems; filing requirements for lines subject to prior approval; hearings.

(1) Each insurer to which this section applies as provided in section 44-7506 shall file with the director every rating system and every modification of such rating system that it proposes to use. No insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act, except:

(a) As provided in subsections (6) and (7) of this section;

(b) As provided by rules and regulations adopted and promulgated pursuant to section 44-7515; or

(c) For types of inland marine risks that have, by custom of the industry, not been written according to manual rates or rating plans. For types of inland marine risks for which the custom of the industry has not been established, the director shall consider the similarity of the new insurance to existing types of insurance and classes of risk and whether it would be reasonably practical to create and file rating systems prior to use.

(2) Every filing shall state its proposed effective date, which shall not be prior to the date that the director receives the filing. Instead of a specific date, a filing may indicate that it will be effective a reasonable specified period of time after approval or that the insurer will notify the director of the effective date within ninety days after approval.

(3) Every filing shall provide an objective description of the risks and the coverages to which the rating system will apply. If the insurer has another rating system on file or pending that applies to some or all of these same risks,

the filing shall disclose this and shall objectively identify those risks to which each rating system will apply. Filings shall include a list of manual pages and other rating system elements that will be replaced when the approval of a filing will result in the replacement or alteration of previously approved rating systems. In addition, insurers shall maintain listings of manual pages and other rating system elements that have been approved by the director so that such listings can be provided upon request.

(4) Each insurer shall file or incorporate by reference to material filed with the director all supporting information relating to a rating system. If a filing is not accompanied by such information or if additional information is required to complete review of the filing, the director may require the filer to furnish the information, and in that event the review period in subsection (10) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(5) An insurer may authorize the director to accept rating system filings and prospective loss cost filings made on its behalf by an advisory organization. The insurer shall file additional information as is necessary to complete its rating systems on file with the director.

(6)(a) Except as otherwise provided in subdivision (6)(b) of this section for medical professional liability insurance, a rate or premium in excess of that provided by a filing otherwise applicable may be used on any specific risk upon the prior written application of the insured that describes the insured's unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that class of risk, filed with and approved by the director.

(b) For medical professional liability insurance, a rate or premium in excess of that provided by a filing otherwise applicable may be used for any specific medical professional upon the prior written consent of the medical professional that describes its unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that medical professional's rate classification. Such signed consent shall be filed with the director no later than thirty days after the effective date of the insurance to which it applies. The director shall monitor such rate applications to assure compliance with this subdivision. The director may, after a hearing, require by order that such applications for an insurer that has demonstrated a pattern of using this rating device for medical professionals that do not possess unusual or extrahazardous exposures, or that otherwise fails to comply with this subdivision, shall be subject to prior approval pursuant to subdivision (6)(a) of this section. Upon application by an insurer affected by such order, demonstrating that its filings made subsequent to the order have been in compliance with this subdivision, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(7) The director may by rules and regulations or by order suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which rating systems cannot practicably be filed before they are used. In making this finding, the director shall ascertain whether a system of rating classifications and exposure bases that would equitably reflect the differences in

expense requirements and expected losses between individual risks has been developed or appears reasonably capable of being developed. The director may examine insurers as is necessary to ascertain whether any rating systems affected by such rules and regulations meet the standards contained in this section.

(8) No filing or any supporting information provided by an insurer pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the approval or disapproval of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute. Correspondence specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(9) The director shall review filings as soon as reasonably possible after they have been made. The director shall disapprove a filing if:

(a) The filing fails to meet the standards contained in section 44-7510;

(b) The insurer has more than one rating system applicable to the line or type of insurance and the insurer fails to specify objective differences between risks to determine the risks and the coverages to which the rating system will apply;

(c) The filing proposes to discriminate between risks based on optional commission differences for agents; or

(d) The filing discriminates between risks based on subjective factors, except that (i) an experience rating plan may use loss reserves without being considered as subjective and (ii) a fire insurance rating plan applying to commercial risks filed for the sole use by an advisory organization may be approved even though it contains subjective rating factors.

(10) Within thirty days after receipt, the director shall approve a filing that meets the requirements of the act, except that this review period may be extended for an additional period not to exceed thirty days if the director gives written notice within the original review period to the insurer or advisory organization. A filing shall be deemed to meet the requirements of the act unless disapproved by the director within the review period or any extension thereof.

(11) If, within the review period provided by subsection (10) of this section or any extension thereof, the director finds that a filing does not meet the requirements of the act, a written disapproval notice shall be sent to the insurer. Such notice shall specify in what respects the filing fails to meet these requirements and state that such filing shall not become effective.

(12) Filings shall become effective on their proposed effective date if approved or deemed approved on or before that date. Filings approved or deemed approved after their proposed effective dates shall become effective after notification by the insurer of a revised effective date, which shall not be prior to the date that the insurer mails the notification to the director. If an insurer fails to furnish a revised effective date within a reasonable period of time not less than ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(13) An insurer or advisory organization whose filing is disapproved may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(14) If, at any time after approval, the director finds that a rating system or modification thereof does not meet or no longer meets the requirements of the act, the director shall hold a hearing in accordance with section 44-7532.

(15) Any insured aggrieved with respect to any filing may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(16) If, after a hearing initiated pursuant to subsection (14) or (15) of this section, the director finds that a filing does not meet the requirements of the act, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such rating system or aspect of a rating system shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Source: Laws 2000, LB 1119, § 11; Laws 2002, LB 1139, § 52; Laws 2005, LB 119, § 29.

44-7513 Policy form filings.

(1) Each insurer to which this section applies as provided in section 44-7508.01 shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. No insurer to which this section applies shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act except as provided in subsection (6) or (7) of this section or as provided by rules and regulations adopted and promulgated pursuant to section 44-7514 or 44-7515.

(2) Every filing shall state its proposed effective date, which shall not be prior to the date that the director receives the filing. Instead of a specific date, a filing may indicate that it will be effective a reasonable specified period of time after approval or that the insurer will notify the director of the effective date within ninety days after approval.

(3) Every policy form filing shall explain the intended use of such policy forms. Filings shall include a list of policy forms that will be replaced when the approval of a filing will result in the replacement of previously approved policy forms. In addition, insurers shall maintain listings of policy forms that have been filed and approved by the director so that such listings can be provided upon request.

(4) If additional information is needed to complete review of a policy form filing, the director may require the filer to furnish the information and in that event the review period in subsection (10) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(5) An insurer may authorize the director to accept policy form filings made on its behalf by an advisory organization.

(6)(a) Subject to the following requirements, policy forms unique in character and designed for and used with regard to an individual risk under common ownership subject to the rate filing provisions of section 44-7508 shall be exempt from the approval requirements contained in subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than thirty days after the effective date of the policy using unfiled provisions, the insurer shall provide the prospective insured with a written listing of the policy forms that have not been approved by the director and receive written acknowledgment from prospective insureds for which it ultimately provides coverage. This requirement does not apply to renewals using the same unfiled policy forms.

(c) A policy form that has been used in this state or elsewhere by the insurer for another risk shall not be subject to the exemption provided by this subsection, except that an insurer may use a policy form previously developed for a single risk for a second risk if the policy form is filed for approval within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply to workers' compensation or excess workers' compensation insurance policy forms or to policy forms that, prior to their use by the insurer, had been filed by an advisory organization in this state or had been filed by the insurer in any jurisdiction, regardless of whether approval was received.

(e) The director may by rules and regulations or by order make specific restrictions relating to the exemption provided by this subsection and may require the informational filing of policy forms subject to such exemption within a reasonable time after their use.

(7) The director may by rules and regulations suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which policy forms cannot practicably be filed before they are used. The director may examine insurers as is necessary to ascertain whether any policy forms affected by such rules and regulations meet the standards contained in the act.

(8) No filing or any supporting information provided by an insurer pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the approval or disapproval of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute. Correspondence specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(9) The director shall review filings as soon as reasonably possible after they have been made. The director shall disapprove a filing that contains provisions, exceptions, or conditions that: (a) Are unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy; (b) are written so as to encourage the misrepresentation of coverage; (c) fail to reasonably provide the general coverage for policies of that type; (d) fail to comply with the provisions or the intent of the laws of this state; or (e) would provide coverage contrary to the public interest.

(10) Within thirty days after receipt, the director shall approve filings that meet the requirements of the act, except that this review period may be extended for an additional period not to exceed thirty days if the director gives written notice within the original review period to the insurer or advisory

organization. A filing shall be deemed to meet the requirements of the act unless disapproved by the director within the review period or any extension thereof.

(11) If, within the review period provided by subsection (10) of this section or any extension thereof, the director finds that a filing does not meet the requirements of the act, a written disapproval notice shall be sent to the insurer. Such notice shall specify in what respects the filing fails to meet these requirements and state that such filing shall not become effective.

(12) Filings shall become effective on their proposed effective date if approved or deemed approved on or before that date. Filings approved or deemed approved after their proposed effective dates shall become effective after notification by the insurer of a revised effective date, which shall not be prior to the date that the insurer mails the notification to the director. If an insurer fails to furnish a revised effective date within a reasonable period of time not less than ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(13) An insurer or advisory organization whose filing is disapproved may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(14) If, at any time after approval, the director finds that a policy form, attachment rule, or modification thereof does not meet or no longer meets the requirements of the act, the director shall hold a hearing in accordance with section 44-7532.

(15) Any insured aggrieved with respect to any filing may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(16) If, after a hearing initiated pursuant to subsection (14) or (15) of this section, the director finds that a filing does not meet the requirements of the act, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such policy form or attachment rule shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Source: Laws 2000, LB 1119, § 13; Laws 2002, LB 1139, § 53; Laws 2003, LB 216, § 22; Laws 2006, LB 875, § 12.

44-7515 Exemption from the requirement for insurers to use filed rates and policy forms for certain commercial policyholders; eligibility for professional employer organizations.

(1) The director shall adopt and promulgate rules and regulations to modify or eliminate requirements for insurers to use filed rates and policy forms for commercial policyholders under common ownership identified through the application of subsection (4) of this section. Unless set forth by rules and regulations, on and after January 1, 2012, eligibility for a professional employer

organization shall be based upon the professional employer organization's total premiums, including premiums for multiple coordinated policies written for the professional employer organization's clients. Unless otherwise set forth in the rules and regulations, the rules and regulations apply to multiple coordinated policies written on behalf of an eligible professional employer organization.

(2) The rules and regulations adopted and promulgated pursuant to this section may establish requirements and thresholds that differ by line or type of insurance or that differ for rates and policy forms.

(3) The rules and regulations adopted and promulgated pursuant to this section shall require insurers to inform exempt commercial policyholders at the earliest practical date, but no later than thirty days after the inception of coverage, of those policy forms applying to them that have not been approved by the director.

(4) The director shall consider the following factors in determining those commercial policyholders to which the rules and regulations adopted and promulgated pursuant to this section shall apply:

(a) For modification or elimination of the applicability of filed rates, characteristics of insureds that are likely to avail themselves of regular price comparisons between competing insurers and are likely to study and understand the differences and details of pricing proposals that they receive;

(b) For modification or elimination of the applicability of filed rates, characteristics of insureds for which filed rates and rating plans are less likely to provide the lowest premiums otherwise consistent with the provisions of the Property and Casualty Insurance Rate and Form Act;

(c) Modification or elimination of the applicability of filed rates for commercial insureds that are primarily located in another jurisdiction where they are subject to similar exemptions or waivers in that jurisdiction;

(d) For modification or elimination of the applicability of filed policy forms, characteristics of insureds that are likely to study and understand the details of their business risks and insurance coverages and exclusions;

(e) For modification or elimination of the applicability of filed policy forms, characteristics of insureds that are likely to require individually written policies, as contrasted to insureds that can customarily have their coverage needs met using policy forms that could also be used for other insureds;

(f) For both rates and policy forms, favorable or adverse experiences with the modification or elimination of regulatory requirements, especially the experience in this state; and

(g) Any other relevant factor.

(5) For exempt commercial policyholders to which rating system regulation is made otherwise inapplicable, insurers shall allocate premiums between policies, exposures, and states in proportion to the expected losses and expenses for those policies, exposures, and states.

(6) The following restrictions apply to rules and regulations adopted and promulgated pursuant to this section:

(a) The rules and regulations may not allow any reduction of the benefits payable under workers' compensation or excess workers' compensation policies or any alteration of provisions for the handling and settlement of claims under such policies, but the rules and regulations may allow exempt commercial

policyholders to negotiate workers' compensation or excess workers' compensation premiums and premium payment provisions;

(b) The rules and regulations may not allow any reduction of automobile insurance coverage limits to less than those required by Nebraska law, but the rules and regulations may allow exempt commercial policyholders to negotiate automobile insurance premiums and premium payment provisions;

(c) The rules and regulations may not allow any limitation of the coverage provisions necessary for health care providers to qualify under the Nebraska Hospital-Medical Liability Act, but the rules and regulations may allow exempt commercial policyholders to negotiate medical professional liability insurance premiums and premium payment provisions;

(d) The rules and regulations may not reduce the rate regulatory requirements applying to insurance written for a professional employer organization on or after January 1, 2012, or to any insurance written for an individual policyholder that is not a client of a professional employer organization with total premiums of less than twenty-five thousand dollars for lines of insurance subject to the Property and Casualty Insurance Rate and Form Act; and

(e) The rules and regulations may not reduce the form regulatory requirements applying to insurance written for a professional employer organization on or after January 1, 2012, or to any insurance written for an individual policyholder that is not a client of a professional employer organization with total premiums of less than fifty thousand dollars for lines of insurance subject to the Property and Casualty Insurance Rate and Form Act.

(7) Policy forms for commercial risks exempted by the rules and regulations adopted and promulgated pursuant to this section may include language that conflicts with section 44-501. If a conflict results between a policy form and the requirements of section 44-501, the language in the policy form shall apply to the extent that it is inconsistent with such section.

Source: Laws 2000, LB 1119, § 15; Laws 2002, LB 1139, § 54; Laws 2003, LB 216, § 23; Laws 2010, LB579, § 13.
Operative date July 15, 2010.

Cross References

Nebraska Hospital-Medical Liability Act, see section 44-2855.

ARTICLE 76

MULTIPLE EMPLOYER WELFARE ARRANGEMENT ACT

Section
44-7613. Annual financial statement; fee; actuarial statement; certificate of compliance.

44-7613 Annual financial statement; fee; actuarial statement; certificate of compliance.

(1) On an annual basis and within ninety days after the last day of the fiscal year of a multiple employer welfare arrangement, each multiple employer welfare arrangement holding a certificate of registration shall file with the director a financial statement, attested to by at least two members of the board of trustees, one of whom shall be the chairperson or president of the board of trustees, and accompanied by a fee of two hundred dollars. The director shall

review the financial statement and shall require additional filings as the director finds reasonably necessary to assure the legitimacy and the financial integrity of the multiple employer welfare arrangement.

(2) On an annual basis and within ninety days after the last day of the fiscal year of a multiple employer welfare arrangement, a statement from a qualified actuary that the rates charged and reserves, both (a) incurred and (b) incurred but not reported, regarding sufficiency to pay claims and associated expenses for the health benefit plan shall be obtained and given to the director. The actuarial statement shall include a confirmation that the stop-loss insurance policy required by section 44-7609 is in force. The actuarial statement shall meet the requirements of any rules or regulations which shall be adopted and promulgated by the director.

(3) On an annual basis and within ninety days after the last day of the fiscal year of a multiple employer welfare arrangement, each multiple employer welfare arrangement holding a certificate of registration shall file with the director a certificate of compliance signed by at least two members of the board of trustees, one of whom shall be the chairperson or president of the board of trustees, certifying that the multiple employer welfare arrangement, to the best of their knowledge, information, and belief, has been conducted in accordance with applicable provisions of Nebraska law and rules and regulations relating to multiple employer welfare arrangements.

Source: Laws 2002, LB 1139, § 13; Laws 2008, LB855, § 51.

ARTICLE 78

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Section
44-7801. Interstate Insurance Product Regulation Compact; ratification.
44-7802. Representative of state.

44-7801 Interstate Insurance Product Regulation Compact; ratification.

The State of Nebraska ratifies the following Interstate Insurance Product Regulation Compact:

Article I. PURPOSES

The purposes of this Compact are, through means of joint and cooperative action among the Compacting States:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

2. To develop uniform standards for insurance products covered under the Compact;

3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more Compacting States;

4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact;

6. To create the Interstate Insurance Product Regulation Commission; and

7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II. DEFINITIONS

For purposes of this Compact:

1. ''Advertisement'' means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission.

2. ''Bylaws'' mean those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.

3. ''Compacting State'' means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.

4. ''Commission'' means the ''Interstate Insurance Product Regulation Commission'' established by this Compact.

5. ''Commissioner'' means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator.

6. ''Domiciliary State'' means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry.

7. ''Insurer'' means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act.

8. ''Member'' means the person chosen by a Compacting State as its representative to the Commission, or his or her designee.

9. ''Non-compacting State'' means any State which is not at the time a Compacting State.

10. ''Operating Procedures'' mean procedures promulgated by the Commission implementing a Rule, Uniform Standard or a provision of this Compact.

11. ''Product'' means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an Insurer is authorized to issue.

12. ''Rule'' means a statement of general or particular applicability and future effect promulgated by the Commission, including a Uniform Standard developed pursuant to Article VII of this Compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the Compacting States.

13. ''State'' means any state, district or territory of the United States of America.

14. ''Third-Party Filer'' means an entity that submits a Product filing to the Commission on behalf of an Insurer.

15. ''Uniform Standard'' means a standard adopted by the Commission for a Product line, pursuant to Article VII of this Compact, and shall include all of

the Product requirements in aggregate; provided, that each Uniform Standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product and the form of the Product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

Article III. ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The Compacting States hereby create and establish a joint public agency known as the ''Interstate Insurance Product Regulation Commission.'' Pursuant to Article IV, the Commission will have the power to develop Uniform Standards for Product lines, receive and provide prompt review of Products filed therewith, and give approval to those Product filings satisfying applicable Uniform Standards; provided, it is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any Insurer from filing its product in any State wherein the Insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the State where filed.

2. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.

3. The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.

4. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a Court of competent jurisdiction where the principal office of the Commission is located.

Article IV. POWERS OF THE COMMISSION

The Commission shall have the following powers:

1. To promulgate Rules, pursuant to Article VII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

2. To exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact, and Advertisement related thereto, which shall have the force and effect of law and shall be binding in the Compacting States, but only for those Products filed with the Commission, provided, that a Compacting State shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner provided in this Compact, and, provided further, that any Uniform Standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the Uniform Standards established by the Commission for long-term care insurance products;

3. To receive and review in an expeditious manner Products filed with the Commission, and rate filings for disability income and long-term care insurance Products, and give approval of those Products and rate filings that satisfy the applicable Uniform Standard, where such approval shall have the force and

effect of law and be binding on the Compacting States to the extent and in the manner provided in the Compact;

4. To receive and review in an expeditious manner Advertisement relating to long-term care insurance products for which Uniform Standards have been adopted by the Commission, and give approval to all Advertisement that satisfies the applicable Uniform Standard. For any product covered under this Compact, other than long-term care insurance products, the Commission shall have the authority to require an insurer to submit all or any part of its Advertisement with respect to that product for review or approval prior to use, if the Commission determines that the nature of the product is such that an Advertisement of the product could have the capacity or tendency to mislead the public. The actions of Commission as provided in this section shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in the Compact;

5. To exercise its rule-making authority and designate Products and Advertisement that may be subject to a self-certification process without the need for prior approval by the Commission;

6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

7. To bring and prosecute legal proceedings or actions in its name as the Commission; provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

9. To establish and maintain offices;

10. To purchase and maintain insurance and bonds;

11. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State;

12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

15. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

16. To remit filing fees to Compacting States as may be set forth in the Bylaws, Rules or Operating Procedures;

17. To enforce compliance by Compacting States with Rules, Uniform Standards, Operating Procedures and Bylaws;

18. To provide for dispute resolution among Compacting States;

19. To advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting jurisdictions, consistent with the purposes of this Compact;

20. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;

21. To establish a budget and make expenditures;

22. To borrow money;

23. To appoint committees, including advisory committees comprising Members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the Bylaws;

24. To provide and receive information from, and to cooperate with law enforcement agencies;

25. To adopt and use a corporate seal; and

26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.

Article V. ORGANIZATION OF THE COMMISSION

1. Membership, Voting and Bylaws

a. Each Compacting State shall have and be limited to one Member. Each Member shall be qualified to serve in that capacity pursuant to applicable law of the Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a Compacting State determines the election or appointment and qualification of its own Commissioner.

b. Each Member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the Bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of the Members vote in favor thereof.

c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:

i. Establishing the fiscal year of the Commission;

ii. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;

iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;

iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consists of a majority of Commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;

v. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

vi. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;

vii. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

viii. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

d. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.

2. Management Committee, Officers and Personnel

a. A Management Committee comprising no more than fourteen (14) members shall be established as follows:

i. One (1) member from each of the six (6) Compacting States with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;

ii. Four (4) members from those Compacting States with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) Compacting States with the largest premium volume, selected on a rotating basis as provided in the Bylaws; and

iii. Four (4) members from those Compacting States with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the Bylaws.

b. The Management Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:

i. Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;

ii. Establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of Uniform Standards and other Rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval

of a product filing, and the review of elections made by a Compacting State to opt out of a Uniform Standard; provided that a Uniform Standard shall not be submitted to the Compacting States for adoption unless approved by two-thirds (2/3) of the members of the Management Committee;

iii. Overseeing the offices of the Commission; and

iv. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission.

c. The Commission shall elect annually officers from the Management Committee, with each having such authority and duties, as may be specified in the Bylaws.

d. The Management Committee may, subject to the approval of the Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.

3. Legislative and Advisory Committees

a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Management Committee shall consult with and report to the legislative committee.

b. The Commission shall establish two (2) advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

c. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

4. Corporate Records of the Commission

The Commission shall maintain its corporate books and records in accordance with the Bylaws.

5. Qualified Immunity, Defense and Indemnification

a. The Members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

b. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that

occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

c. The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI. MEETINGS AND ACTS OF THE COMMISSION

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

2. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

Article VII. RULES AND OPERATING PROCEDURES:
RULEMAKING FUNCTIONS OF THE COMMISSION
AND OPTING OUT OF UNIFORM STANDARDS

1. Rulemaking Authority. The Commission shall promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.

2. Rulemaking Procedure. Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) in each Compacting State responsible for insurance issues of its intention to adopt the Uniform Standard. The Commission in adopting a Uniform Standard shall consider fully all submitted materials and issue a concise explanation of its decision.

3. Effective Date and Opt Out of a Uniform Standard. A Uniform Standard shall become effective ninety (90) days after its promulgation by the Commis-

sion or such later date as the Commission may determine; provided, however, that a Compacting State may opt out of a Uniform Standard as provided in this Article. ''Opt out'' shall be defined as any action by a Compacting State to decline to adopt or participate in a promulgated Uniform Standard. All other Rules and Operating Procedures, and amendments thereto, shall become effective as of the date specified in each Rule, Operating Procedure or amendment.

4. Opt Out Procedure. A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department under the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must (a) give written notice to the Commission no later than ten (10) business days after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State. The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State. The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted by the Commission provides reasonable protections to consumers of the relevant Product.

Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of this Compact, prospectively opt out of all Uniform Standards involving long-term care insurance products by expressly providing for such opt out in the enacted Compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any State to participate in this Compact. Such an opt out shall be effective at the time of enactment of this Compact by the Compacting State and shall apply to all existing Uniform Standards involving long-term care insurance products and those subsequently promulgated.

5. Effect of Opt Out. If a Compacting State elects to opt out of a Uniform Standard, the Uniform Standard shall remain applicable in the Compacting State electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a Uniform Standard by a Compacting State becomes effective as provided under the laws of that State, the Uniform Standard shall have no further force and effect in that State unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the State. If a Compacting State opts out of a Uniform Standard after the Uniform Standard has been made effective in that State, the opt out shall have the same prospective effect as provided under Article XIV for withdrawals.

6. Stay of Uniform Standard. If a Compacting State has formally initiated the process of opting out of a Uniform Standard by regulation, and while the regulatory opt out is pending, the Compacting State may petition the Commission, at least fifteen (15) days before the effective date of the Uniform Standard,

to stay the effectiveness of the Uniform Standard in that State. The Commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the Commission, the stay or extension thereof may postpone the effective date by up to ninety (90) days, unless affirmatively extended by the Commission; provided, a stay may not be permitted to remain in effect for more than one (1) year unless the Compacting State can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the Compacting State from opting out. A stay may be terminated by the Commission upon notice that the rulemaking process has been terminated.

7. Not later than thirty (30) days after a Rule or Operating Procedure is promulgated, any person may file a petition for judicial review of the Rule or Operating Procedure; provided, that the filing of such a petition shall not stay or otherwise prevent the Rule or Operating Procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the Rule or Operating Procedure to be unlawful if the Rule or Operating Procedure represents a reasonable exercise of the Commission's authority.

Article VIII. COMMISSION RECORDS AND ENFORCEMENT

1. The Commission shall promulgate Rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The Commission may promulgate additional Rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner of the duty to disclose any relevant records, data or information to the Commission; provided, that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that, except as otherwise expressly provided in this Act, the Commission shall not be subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the Commission shall remain confidential after such information is provided to any Commissioner.

3. The Commission shall monitor Compacting States for compliance with duly adopted Bylaws, Rules, including Uniform Standards, and Operating Procedures. The Commission shall notify any non-complying Compacting State in writing of its noncompliance with Commission Bylaws, Rules or Operating Procedures. If a non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of noncompliance, the Compacting State shall be deemed to be in default as set forth in Article XIV.

4. The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the

Insurer in accordance with the provisions of the State's law. The Commissioner's enforcement of compliance with the Compact is governed by the following provisions:

a. With respect to the Commissioner's market regulation of a Product or Advertisement that is approved or certified to the Commission, the content of the Product or Advertisement shall not constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.

b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the content of an Advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of requests for authorization or records of the Commission's action on such requests.

Article IX. DISPUTE RESOLUTION

The Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more Compacting States, or between Compacting States and Non-compacting States, and the Commission shall promulgate an Operating Procedure providing for resolution of such disputes.

Article X. PRODUCT FILING AND APPROVAL

1. Insurers and Third-Party Filers seeking to have a Product approved by the Commission shall file the Product with, and pay applicable filing fees to, the Commission. Nothing in this Act shall be construed to restrict or otherwise prevent an insurer from filing its Product with the insurance department in any State wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the States where filed.

2. The Commission shall establish appropriate filing and review processes and procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding any provision herein to the contrary, the Commission shall promulgate Rules to establish conditions and procedures under which the Commission will provide public access to Product filing information. In establishing such Rules, the Commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a Product filing or supporting information.

3. Any Product approved by the Commission may be sold or otherwise issued in those Compacting States for which the Insurer is legally authorized to do business.

Article XI. REVIEW OF COMMISSION
DECISIONS REGARDING FILINGS

1. Not later than thirty (30) days after the Commission has given notice of a disapproved Product or Advertisement filed with the Commission, the Insurer or Third Party Filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels

and provide for notice and hearing. An allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

2. The Commission shall have authority to monitor, review and reconsider Products and Advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant Uniform Standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 above.

Article XII. FINANCE

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, Compacting States and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.

2. The Commission shall collect a filing fee from each Insurer and Third Party Filer filing a product with the Commission to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

3. The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this Compact.

4. The Commission shall be exempt from all taxation in and by the Compacting States.

5. The Commission shall not pledge the credit of any Compacting State, except by and with the appropriate legal authority of that Compacting State.

6. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an Annual Report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be shared with the Commissioner of any Compacting State upon request provided, however, that any workpapers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

7. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

Article XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1. Any State is eligible to become a Compacting State.

2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States; provided, the Commission shall become effective for purposes of adopting Uniform Standards for, reviewing, and giving approval or disapproval of, Products filed with the Commission that satisfy applicable Uniform Standards only after twenty-six (26) States are Compacting States or, alternatively, by States representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.

3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.

Article XIV. WITHDRAWAL, DEFAULT AND TERMINATION

1. Withdrawal

a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; provided, that a Compacting State may withdraw from the Compact (''Withdrawing State'') by enacting a statute specifically repealing the statute which enacted the Compact into law.

b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any Advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Withdrawing State as provided in Paragraph e of this section.

c. The Commissioner of the Withdrawing State shall immediately notify the Management Committee in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

d. The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.

e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. The Commission's approval of Products and Advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner as provided by the laws of the Withdrawing State for the prospective disapproval of products or advertisement previously approved under state law.

f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

2. Default

a. If the Commission determines that any Compacting State has at any time defaulted (''Defaulting State'') in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules or Operating Procedures, then, after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

b. Product approvals by the Commission or product self-certifications, or any Advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Section 1 of this article.

c. Reinstatement following termination of any Compacting State requires a reenactment of the Compact.

3. Dissolution of Compact

a. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

b. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the Bylaws.

Article XV. SEVERABILITY AND CONSTRUCTION

1. The provisions of this Compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

2. The provisions of this Compact shall be liberally construed to effectuate its purposes.

Article XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

1. Other Laws

a. Nothing herein prevents the enforcement of any other law of a Compacting State, except as provided in Paragraph b of this section.

b. For any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products. For Advertisement that is subject to the Commission's authority, any Rule, Uniform Standard or other requirement of the Commission which governs the content of the Advertisement shall constitute

the exclusive provision that a Commissioner may apply to the content of the Advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the Product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

c. All insurance products filed with individual States shall be subject to the laws of those States.

2. Binding Effect of this Compact

a. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are binding upon the Compacting States.

b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.

c. Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that Compacting State, and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

Source: Laws 2005, LB 119, § 36.

44-7802 Representative of state.

The Director of Insurance is hereby designated to serve as the representative of this state to the Interstate Insurance Product Regulation Commission.

Source: Laws 2005, LB 119, § 37.

ARTICLE 79

PROPERTY AND CASUALTY ACTUARIAL OPINION ACT

Section
44-7901. Act, how cited.
44-7902. Statement of Actuarial Opinion; filing; supporting documents; appointed actuary; immunity.
44-7903. Statement of Actuarial Opinion; supporting documents; disclosure allowed; when.

44-7901 Act, how cited.

Sections 44-7901 to 44-7903 shall be known and may be cited as the Property and Casualty Actuarial Opinion Act.

Source: Laws 2005, LB 119, § 39.

44-7902 Statement of Actuarial Opinion; filing; supporting documents; appointed actuary; immunity.

(1) Beginning January 1, 2007, every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled Statement of Actuarial Opinion. This opinion shall be filed in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions.

(2)(a) Every property and casualty insurance company domiciled in this state that is required to submit a Statement of Actuarial Opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Statement of Actuarial Opinion required in subsection (1) of this section.

(b) A property and casualty insurance company authorized to do business in this state but not domiciled in this state shall provide the actuarial opinion summary to the Director of Insurance upon request.

(3)(a) An actuarial report and underlying workpapers as required by the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions shall be prepared to support each Statement of Actuarial Opinion.

(b) If the insurance company fails to provide a supporting actuarial report or workpapers at the request of the director or the director determines that the supporting actuarial report or workpapers provided by the insurance company is otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers.

(4) The appointed actuary shall not be liable for damages to any person, other than the insurance company or the director, for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

Source: Laws 2005, LB 119, § 40.

44-7903 Statement of Actuarial Opinion; supporting documents; disclosure allowed; when.

(1) The Statement of Actuarial Opinion shall be provided with the annual statement in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions and shall be a public document.

(2)(a) Documents, materials, or other information in the possession or control of the Department of Insurance that are considered an actuarial report, workpapers, or actuarial opinion summary provided in support of the opinion, and any other material provided by the company to the Director of Insurance in connection with the actuarial report, workpapers, or actuarial opinion summary, shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(b) This section shall not be construed to limit the director's authority to release the documents to the Actuarial Board for Counseling and Discipline if the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the director for preserving the confidentiality of the documents, nor shall this section be construed to limit the director's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the director's official duties.

(3) Neither the director nor any person who received documents, materials, or other information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (2) of this section.

(4) The director:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (2) of this section with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality; and

(b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain information received pursuant to this subdivision as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

Source: Laws 2005, LB 119, § 41.

ARTICLE 80

HEALTH CARE PROMPT PAYMENT ACT

Section

Section

44-8001 Act, how cited.

Sections 44-8001 to 44-8010 shall be known and may be cited as the Health Care Prompt Payment Act.

Source: Laws 2005, LB 389, § 1.

44-8002 Terms, defined.

For purposes of the Health Care Prompt Payment Act:

(1) Claim form means an insurer's standard printed or electronic transaction form that complies with the standards issued by the Secretary of the United States Department of Health and Human Services or, if an insurer does not have a standard printed or electronic transaction form, any form which complies with such standards;

(2) Clean claim means a claim for payment of health care services that is submitted by a Nebraska health care provider to an insurer on a claim form with all required fields completed with information to adjudicate the claim in accordance with any published filing requirements of the insurer;

(3) Director means the Director of Insurance;

(4) Insurer means an entity that contracts to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a prepaid limited health service organization, a prepaid dental service corporation, a participant in an insurance arrangement as defined in section 44-4105, or any other entity providing a plan of health insurance, health benefits, or health care services. Insurer does not include the medical assistance program established pursuant to the Medical Assistance Act, a property and liability insurer, a motor vehicle insurer, a workers' compensation insurer, a risk management pool, or a self-insured employer who contracts for services to be provided through a managed care plan certified pursuant to section 48-120.02;

(5) Prompt payment act compliance statement means a certification made in good faith by an insurer that, during the twenty-four-month period ending on the preceding June 30, it paid, denied, or settled more than ninety percent of its clean claims within the time periods set forth in subsections (1) and (2) of section 44-8004;

(6) Repricer means an entity that receives claims from health care providers and submits them to insurers after adjudicating or repricing such claims; and

(7) Unfair payment pattern means any of the following patterns of conduct:

(a) Engaging in a demonstrable and unjust pattern of reviewing or processing complete and accurate claims that results in payment delays;

(b) Engaging in a demonstrable and unjust pattern of reducing the amount of payment or denying complete and accurate claims;

(c) Repeated failure to pay the uncontested portions of a claim within the time periods specified in section 44-8004; or

(d) Failing on a repeated basis to pay the interest when due on claims pursuant to section 44-8005.

Source: Laws 2005, LB 389, § 2; Laws 2006, LB 1248, § 66.

Cross References

Medical Assistance Act, see section 68-901.

44-8003 Claim; date of receipt; rebuttable presumption.

If a claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the insurer or the insurer's clearinghouse. If a claim is submitted by mail, the claim is presumed to have been received five business days after the claim has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all.

Source: Laws 2005, LB 389, § 3.

44-8004 Action on claim; deadline.

(1) A clean claim shall be paid, denied, or settled within thirty calendar days after receipt by the insurer if submitted electronically and within forty-five calendar days after receipt if submitted in a form other than electronically.

(2) If the resolution of a claim requires additional information, the insurer shall, within thirty calendar days after receipt of the claim, give the health care provider, policyholder, insured, or patient, as appropriate, a full explanation in writing of what additional information is needed to resolve the claim, including any additional medical or other information related to the claim. The applicable time period set forth in subsection (1) of this section shall be tolled as of the date the additional information is requested until the date all such additional information necessary to resolve the claim is received. The person receiving a request for such additional information shall submit all additional information requested by the insurer within thirty calendar days after receipt of such request. After such person has provided all such additional information necessary to resolve the claim, the claim shall be paid, denied, or settled by the insurer within the remaining applicable time period set forth in subsection (1) of this section. Failure to furnish additional information within the time period required shall not invalidate or reduce the claim if it was not reasonably possible to give such information within such time period. The insurer may deny a claim if a health care provider receives a request for additional information and fails to submit additional information requested under this subsection.

(3) For purposes of subsection (1) of this section, a clean claim shall not include a claim:

(a) For which the insurer needs additional information in order to resolve one or more issues concerning coverage, eligibility, coordination of benefits, investigation of preexisting conditions, subrogation, determination of medical necessity, or the use of unlisted procedural codes; or

(b) For which the insurer has a reasonable belief supported by specific information that the claim has been submitted fraudulently.

(4) If a claim is submitted to a repricer, the time periods for payment, denial, or settlement of such claims set forth in this section shall commence upon receipt of the claim by the repricer.

Source: Laws 2005, LB 389, § 4.

44-8005 Interest; rate; payment.

(1) An insurer that fails to pay, deny, or settle a clean claim in accordance with the time periods set forth in subsection (1) of section 44-8004 or to take other required action within the time periods set forth in subsection (2) of section 44-8004 shall pay interest at the rate of twelve percent per annum on the total amount ultimately allowed on the claim, accruing from the date payment was due pursuant to section 44-8004.

(2) To the extent that interest is not paid concurrently with the claim, it may be paid on a quarterly basis or when the aggregate interest for a health care provider exceeds ten dollars.

Source: Laws 2005, LB 389, § 5.

44-8006 Prompt payment act compliance statement; filing; effect; list available.

An insurer shall be exempt from the requirements of section 44-8005 during a calendar year when the insurer has a prompt payment act compliance statement on file with the director. Any insurer desiring to obtain the exemption shall file a prompt payment act compliance statement with the director not later than December 1 of the year prior to the exemption year. A list of insurers with prompt payment act compliance statements on file shall be publicly available from the director.

Source: Laws 2005, LB 389, § 6.

44-8007 Claims processing functions; delegation; requirements.

If an insurer delegates its claims processing functions to a third party, the delegation agreement shall provide that the third party shall consent to an examination and cooperate with that examination by the director and shall comply with the requirements of the Health Care Prompt Payment Act. Any delegation by the insurer shall not be construed to limit the insurer's responsibility to comply with the act.

Source: Laws 2005, LB 389, § 7.

44-8008 Compliance with act; unfair payment pattern; director; powers and duties; enforcement; penalty.

(1) An insured, a representative of an insured, or a health care provider acting on behalf of the insured may notify the director of activities related to an unfair payment pattern. The director shall compile a record of notices, and if it appears to the director that an insurer, or a third party working on behalf of an insurer, may be engaged in an unfair payment pattern or that an insurer has filed a prompt payment act compliance statement that the insurer knows or has reason to know is false, the director may examine and investigate the affairs of such insurer or third party, either as part of a regularly scheduled examination or as part of an examination called solely for the purposes of determining compliance with the Health Care Prompt Payment Act. The insurer shall

reimburse the Department of Insurance for the expense of the examination of the insurer or third party working on behalf of the insurer in the same manner as provided for examination of insurance companies in the Insurers Examination Act.

(2) If as a result of an examination conducted under subsection (1) of this section, the director finds that any insurer doing business in this state is engaged in any unfair payment pattern, or that the insurer has filed a prompt payment act compliance statement that the insurer knows or has reason to know is false, and that a proceeding in respect thereto would be in the public interest, the director shall issue and serve upon such insurer a statement of the charges in that respect and a notice of hearing thereon, which notice shall set a hearing date not less than ten days from the date of the notice.

(3) If, after a hearing conducted pursuant to the Administrative Procedure Act, the director finds that an insurer or a third party working on behalf of an insurer has engaged in an unfair payment pattern or that the insurer has filed a prompt payment act compliance statement that the insurer knows or has reason to know is false, the director shall reduce the findings to writing and shall issue and cause to be served upon the insurer a copy of the findings and an order requiring the insurer or any third party working on behalf of the insurer to cease and desist from engaging in the act or practice and the director may order any one or more of the following:

(a) Payment of a monetary penalty of not more than one thousand dollars for each violation, not to exceed an aggregate penalty of thirty thousand dollars, unless the violation was committed flagrantly and in conscious disregard of the Health Care Prompt Payment Act, in which case the penalty shall not be more than fifteen thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars;

(b) Suspension or revocation of the insurer's license or certificate of authority if the insurer knew or reasonably should have known it was in violation of the act; and

(c) Withdrawal of the insurer's prompt payment act compliance statement for such time as the director determines.

(4) Any insurer who violates a cease and desist order under subsection (3) of this section may, after notice and hearing and upon order of the director, be subject to:

(a) A monetary penalty of not more than thirty thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars; and

(b) Suspension or revocation of the insurer's license or certificate of authority.

Source: Laws 2005, LB 389, § 8.

Cross References

Administrative Procedure Act, see section 84-920.
Insurers Examination Act, see section 44-5901.

44-8009 Applicability of act.

The Health Care Prompt Payment Act does not apply to any individual or group policies that provide coverage for a specific disease, accident-only coverage, hospital indemnity coverage, disability income coverage, medicare

supplement coverage, long-term care coverage, or other limited-benefit coverage. The act does not apply to any claim submitted before January 1, 2006.

Source: Laws 2005, LB 389, § 9.

44-8010 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Health Care Prompt Payment Act.

Source: Laws 2005, LB 389, § 10.

ARTICLE 81

NEBRASKA PROTECTION IN ANNUITY TRANSACTIONS ACT

Section
44-8101. Act, how cited.
44-8102. Purpose of act.
44-8103. Applicability of act.
44-8104. Act; exemptions.
44-8105. Terms, defined.
44-8106. Recommendation; purchase or exchange of annuity; requirements; insurer; duties.
44-8107. Director of Insurance; powers; violations.

44-8101 Act, how cited.

Sections 44-8101 to 44-8107 shall be known and may be cited as the Nebraska Protection in Annuity Transactions Act.

Source: Laws 2006, LB 875, § 13; Laws 2007, LB117, § 26.

44-8102 Purpose of act.

The purpose of the Nebraska Protection in Annuity Transactions Act is to set forth standards and procedures for recommendations made by insurance producers and insurers to consumers regarding annuity transactions so that consumers' insurance needs and financial objectives at the time of the transaction are appropriately addressed.

Source: Laws 2006, LB 875, § 14; Laws 2007, LB117, § 27.

44-8103 Applicability of act.

The Nebraska Protection in Annuity Transactions Act applies to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer if an insurance producer is not involved, that results in the recommended purchase or exchange.

Source: Laws 2006, LB 875, § 15; Laws 2007, LB117, § 28.

44-8104 Act; exemptions.

Unless otherwise specifically included, the Nebraska Protection in Annuity Transactions Act does not apply to recommendations involving:

(1) Direct response solicitations if there is no recommendation based on information collected from the consumer pursuant to the act; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement Income Security Act of 1974;

(b) A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer;

(c) A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Contracts entered into pursuant to the Burial Pre-Need Sale Act.

Source: Laws 2006, LB 875, § 16; Laws 2007, LB117, § 29.

Cross References

Burial Pre-Need Sale Act, see section 12-1101.

44-8105 Terms, defined.

For purposes of the Nebraska Protection in Annuity Transactions Act:

(1) Annuity means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity;

(2) Insurer means a company required to be licensed under the laws of this state to provide insurance products, including annuities;

(3) Insurance producer means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities; and

(4) Recommendation means advice provided by an insurance producer, or an insurer if an insurance producer is not involved, to a consumer that results in a purchase or exchange of an annuity in accordance with that advice.

Source: Laws 2006, LB 875, § 17; Laws 2007, LB117, § 30.

44-8106 Recommendation; purchase or exchange of annuity; requirements; insurer; duties.

(1) The insurance producer, or insurer if an insurance producer is not involved, shall have reasonable grounds to believe that the recommendation is suitable for the consumer based on the facts disclosed by the consumer before making a recommendation to a consumer under the Nebraska Protection in Annuity Transactions Act. The recommendation shall be based on the facts disclosed by the consumer relating to his or her investments, other insurance products, and the financial situation and needs of the consumer.

(2) Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer if an insurance producer is not involved, shall make reasonable efforts to obtain information concerning:

(a) The consumer's financial status;

(b) The consumer's tax status;

(c) The consumer's investment objectives; and

(d) Such other information used or considered to be reasonable in making recommendations to the consumer.

(3)(a) Except as provided under subdivision (3)(b) of this section, neither an insurance producer, nor an insurer if an insurance producer is not involved, shall have any obligation to a consumer under subsection (1) of this section related to any recommendation if the consumer:

(i) Refuses to provide relevant information requested by the insurance producer or insurer;

(ii) Decides to enter into an insurance transaction that is not based on a recommendation of the insurance producer or insurer; or

(iii) Fails to provide complete or accurate information.

(b) If a consumer provides information as described in subdivision (3)(a) of this section, an insurance producer or insurer shall make a recommendation that is reasonable under all the circumstances that are actually known to the insurance producer or insurer at the time of the recommendation.

(4)(a) An insurer shall:

(i) Assure that a system to supervise recommendations that is reasonably designed to achieve compliance with the Nebraska Protection in Annuity Transactions Act is established and maintained by complying with subdivisions (4)(d) through (f) of this section; or

(ii) Establish and maintain a system to supervise recommendations.

(b) Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of the act.

(c) A general agent and independent agency shall either adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with the act or establish and maintain such a system. Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of the act.

(d) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subdivision (4)(a) of this section with respect to insurance producers under contract with or employed by the third party.

(e) An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision (4)(d) of this section is performing the functions required under subdivision (4)(a) of this section and shall take such reasonable action to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing the following:

(i) Obtaining annually a certification from a third-party senior manager that the manager represents that the third party is performing the required functions; and

(ii) Periodically selecting third parties contracting under subdivision (4)(d) of this section to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review

that are reasonable under the circumstances. Such third parties shall be selected based on reasonable selection criteria.

(f) An insurer shall have fulfilled its responsibilities under subdivision (4)(a) of this section if the insurer:

(i) Contracts with a third party pursuant to subdivision (4)(d) of this section; and

(ii) Complies with the requirements to supervise in subdivision (4)(e) of this section.

(g) An insurer, general agent, or independent agency is not required by subdivision (4)(a) or (b) of this section to:

(i) Review all insurance producer solicited transactions; or

(ii) Supervise an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(h) A general agent or independent agency contracting with an insurer pursuant to subdivision (4)(d) of this section shall, when requested by the insurer pursuant to subdivision (4)(e) of this section, promptly give a certification as described in subdivision (4)(e)(i) of this section or give a clear statement that it is unable to meet the certification criteria.

(i) No person may provide a certification under subdivision (4)(e)(i) of this section unless:

(i) The person is a senior manager with responsibility for the delegated functions; and

(ii) The person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the ability of the Director of Insurance to enforce the act.

Source: Laws 2006, LB 875, § 18; Laws 2007, LB117, § 31.

44-8107 Director of Insurance; powers; violations.

(1) The Director of Insurance may order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by an insurance producer's or insurer's violation of the Nebraska Protection in Annuity Transactions Act;

(b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the act; and

(c) A general agency or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the act.

(2) A violation of the act shall be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

(3) The director may reduce or eliminate any applicable penalty under section 44-1529 for a violation of subsection (1) or (2) of section 44-8106 or

subdivision (3)(b) of such section if corrective action for the consumer was taken promptly after a violation was discovered.

Source: Laws 2006, LB 875, § 19; Laws 2007, LB117, § 32.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 82
CAPTIVE INSURERS ACT

Section

44-8201 Act, how cited.

Sections 44-8201 to 44-8218 shall be known and may be cited as the Captive Insurers Act.

Source: Laws 2007, LB117, § 35.

44-8202 Purposes of act.

The purposes of the Captive Insurers Act are to set forth the procedures for organizing and regulating the operations of captive insurers within the State of Nebraska and to encourage integrity, financial solvency, and stability of captive insurers for the purpose of promoting the development of Nebraska businesses.

Source: Laws 2007, LB117, § 36.

44-8203 Terms, defined.

For purposes of the Captive Insurers Act:

(1) Affiliated entity means any entity that directly or indirectly controls, is controlled by, or is under common control with a captive insurer;

(2) Captive insurer means a domestic insurer authorized under the act to provide insurance and reinsurance to its parent, any affiliated entity, or both.

Such insurance and reinsurance shall be limited to the risks, hazards, and liabilities of its parent and affiliated entities;

(3) Control means the power to direct or cause the direction of the management and policies of an entity through ownership of voting securities;

(4) Director means the Director of Insurance; and

(5) Parent means an entity that directly or indirectly owns, controls, or holds, with power to vote, more than fifty percent of the outstanding voting securities or other ownership interest of a captive insurer.

Source: Laws 2007, LB117, § 37.

44-8204 Name.

No captive insurer shall adopt the name of any existing insurer or any name that may be misleading to the public.

Source: Laws 2007, LB117, § 38.

44-8205 Certificate of authority; application; fee; plan of operation; filings required; director; powers; subsequent amendments; books and records.

(1) No person shall transact the business of insurance as a captive insurer without first applying for and obtaining from the director a certificate of authority. An applicant shall submit a nonrefundable application fee of five hundred dollars with a plan of operation which includes:

(a) Articles of incorporation and bylaws or other documents of organization;

(b) Pro forma financial statements for two years;

(c) The source and nature of initial and ongoing capital;

(d) A feasibility study which discloses the types and adequacy of the insurance programs of the captive insurer, the identity of the parent and affiliated entities benefiting from such insurance program, and the relationships to the captive insurer as well as all projected expenses, contracts, and a holding company system chart identifying the ownership and relationship of the parent and affiliated entities;

(e) Copies of all insurance and reinsurance agreements of the captive insurer as well as disclosure of all transactions material to the insurance operations;

(f) Financial condition of the parent and, if requested by the director, any affiliated entities, benefiting from the captive insurance program;

(g) A management overview including competence, experience, and integrity of those controlling the insurance operations;

(h) A statement submitting to the jurisdiction of the director; and

(i) An explanation of how the operation of the captive insurer promotes the development of a Nebraska business.

(2) If the plan of operation is accepted and approved by the director, the articles and other documents of organization shall be filed in the office of the Secretary of State. A copy of the articles or other documents of organization, certified by the Secretary of State, shall be filed with the director. Amendments to organizational documents shall be deemed a change to the plan of operation and shall be filed with and approved by the director before they are submitted to the Secretary of State.

(3) The director may refuse to issue a certificate of authority until he or she is reasonably satisfied that the plan of operation contains sufficient indication of a successful insurance operation and that the captive insurer will be able to meet expected or ongoing policy obligations.

(4) A captive insurer shall obtain prior written approval of any subsequent amendments to any components of the original plan of operation. The director shall deem that any captive insurer that has failed to disclose a transaction or a series of transactions that would circumvent the Captive Insurers Act to be in hazardous financial condition with respect to the public or its policyholders and subject to suspension or revocation of the certificate of authority of the captive insurer.

(5) Except as otherwise authorized in section 44-8216, a captive insurer may only transact any line or lines of insurance specified in subdivisions (5), (7), (8), (9), (10), and (18) of section 44-201. A captive insurer shall not transact directors and officers insurance.

(6) Every captive insurer shall provide to the director books and records in the state as to enable the financial examination of the captive insurer by the director.

Source: Laws 2007, LB117, § 39.

44-8206 Management of business; director or officer; restriction.

A board of directors or other governing body consisting of not less than three individuals shall manage the business of each captive insurer. The organizational documents or bylaws shall provide for the terms, meetings, and elections of the directors and officers of the governing body. No individual may serve as a director or officer who has been convicted of fraud involving any financial institution or of a felony involving misuse of funds.

Source: Laws 2007, LB117, § 40.

44-8207 Certificate of authority; expiration; renewal; fee.

The certificate of authority issued to a captive insurer shall expire on June 30 of each year. The director shall renew the certificate of authority upon payment of an annual renewal fee of five hundred dollars and all other required fees and the filing of all required reports.

Source: Laws 2007, LB117, § 41.

44-8208 Report; filing required; form; director; other reports.

(1) Every captive insurer with a certificate of authority to transact business in this state pursuant to the Captive Insurers Act shall file with the director a report, signed and sworn to by its chief officers, of its financial condition as of the end of each fiscal year. The report shall be in a form prescribed by the director and contain such information as the director deems necessary for the purpose of ascertaining whether the captive insurer can continue to meet its policy obligations to its parent, affiliated entities, and claimants. The report shall be filed within sixty days following the end of the captive insurer's fiscal year. The director may require that the report include the information required by section 44-322, including any instructions, procedures, and guidelines consistent with the act.

(2) The director may prescribe the format and frequency of other reports to be filed, which may include, but not be limited to, summary loss reports, quarterly financial statements, audited annual financial statements, holding company statements, biographical information on officers and directors, and other professional reports.

Source: Laws 2007, LB117, § 42.

44-8209 Total capital and surplus requirements; director; powers; letter of credit requirements.

(1) No captive insurer shall be permitted to transact any business in this state unless it maintains total capital and surplus in the amount of at least one hundred thousand dollars in such form as is acceptable to the director.

(2) Upon a written finding by the director that the approved plan of operation or the operational results of the captive insurer require either additional capital or a larger surplus than required by this section, the director may require that additional capital or surplus, or both, be obtained. Additional capital or surplus may be tendered in the form of an irrevocable evergreen letter of credit acceptable to the director.

(3) Any letter of credit provided to satisfy the requirements of the Captive Insurers Act shall be:

(a) Jointly held under the control of the director and the captive insurer for the benefit of claimants;

(b) Issued or confirmed by an institution that is insured by the Federal Deposit Insurance Corporation;

(c) The sole property of such captive insurer; and

(d) Free and clear of any claim or encumbrance.

Source: Laws 2007, LB117, § 43.

44-8210 Examinations.

The director may examine the financial condition, affairs, and management of any applicant or captive insurer pursuant to the Insurers Examination Act.

Source: Laws 2007, LB117, § 44.

Cross References

Insurers Examination Act, see section 44-5901.

44-8211 Investments; limitation on loans and investments.

(1) Captive insurers shall be subject to the types and nature of investments as set forth in the Insurers Investment Act, but not subject to any limitations contained in such act as to invested amounts, except that the director may prohibit or limit any investment that threatens the solvency or liquidity of any such captive insurer or if such investments are not made in accordance with the approved plan of operation.

(2) No captive insurer may make a loan to or an investment in its parent or affiliated entities without prior written approval of the director and any such transaction shall be evidenced by documentation approved by the director. Loans of minimum capital and surplus funds are prohibited.

Source: Laws 2007, LB117, § 45.

Cross References

Insurers Investment Act, see section 44-5101.

44-8212 Credit for reserves ceded to reinsurer.

(1) Except as otherwise provided in subsection (2) of this section, any captive insurer authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer pursuant to the provisions of sections 44-416.05 to 44-416.10 and any rules and regulations adopted and promulgated under such sections.

(2) Notwithstanding the provisions of subsection (1) of this section, any captive insurer may cede risks to a reinsurer not meeting the standards of sections 44-416.05 to 44-416.10 and may take reserve credits if the captive insurer receives prior written approval from the director.

Source: Laws 2007, LB117, § 46.

44-8213 Membership in guaranty associations.

A captive insurer shall not be a member of the Nebraska Property and Liability Insurance Guaranty Association or the Nebraska Life and Health Insurance Guaranty Association. The Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act shall not be applicable to coverage offered by a captive insurer.

Source: Laws 2007, LB117, § 47.

Cross References

Nebraska Life and Health Insurance Guaranty Association Act, see section 44-2720.
Nebraska Property and Liability Insurance Guaranty Association Act, see section 44-2418.

44-8214 Voluntary dissolution; approval of director required; effect of dissolution.

The director shall approve any voluntary dissolution of a captive insurer if the director determines that all obligations of the captive insurer have been satisfied. The dissolution of a captive insurer shall not impair the right of any person to commence an action against the captive insurer for any liability previously incurred.

Source: Laws 2007, LB117, § 48.

44-8215 Suspension or revocation of certificate of authority; administrative fine; grounds; notice; hearing; cease and desist order.

(1) After notice and a hearing conducted pursuant to the Administrative Procedure Act, the director may suspend or revoke a certificate of authority or may impose an administrative fine not to exceed one thousand dollars per violation, or any combination of such actions, if the director finds the captive insurer:

(a) Engages in financial practices that make further transaction of business in this state hazardous or injurious to claimants or the public as defined by rule and regulation adopted and promulgated by the director;

(b) Within fifteen business days fails to respond to an inquiry of the director;

(c) Fails to pay any final judgment rendered against it in this state on any contractual obligation in a reasonable period of time;

(d) Conducts business fraudulently or has not met its contractual obligations in good faith; or

(e) Violates any provision of the laws of this or any other state.

(2) In lieu of or in addition to the administrative fines set forth in subsection (1) of this section, the director may issue a cease and desist order to a captive insurer if the captive insurer engages in any of the activities set forth in subsection (1) of this section.

Source: Laws 2007, LB117, § 49.

Cross References

Administrative Procedure Act, see section 84-920.

44-8216 Creation of special purpose financial captive insurers; applicability of act; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality.

(1) This section provides for the creation of special purpose financial captive insurers to diversify and broaden insurers' access to sources of capital.

(2) For purposes of this section:

(a) Counterparty means a special purpose financial captive insurer's parent or affiliated entity, which is an insurer domiciled in Nebraska that cedes life insurance risks to the special purpose financial captive insurer pursuant to the special purpose financial captive insurer contract;

(b) Insolvency or insolvent means that the special purpose financial captive insurer is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute;

(c) Insurance securitization means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements, under which a special purpose financial captive insurer obtains proceeds either directly or indirectly through the issuance of securities, and may hold the proceeds in trust to secure the obligations of the special purpose financial captive insurer under one or more special purpose financial captive insurer contracts, in that the investment risk to the holders of the securities is contingent upon the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract in accordance with the transaction terms and pursuant to the Captive Insurers Act;

(d) Organizational document means the special purpose financial captive insurer's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the special purpose financial captive insurer as a legal entity or prescribes its existence;

(e) Permitted investments means those investments that meet the qualifications set forth in section 44-8211;

(f) Securities means debt obligations, equity investments, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments;

(g) Special purpose financial captive insurer means a captive insurer which has received a certificate of authority from the director for the limited purposes provided for in this section;

(h) Special purpose financial captive insurer contract means a contract between the special purpose financial captive insurer and the counterparty pursuant to which the special purpose financial captive insurer agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business; and

(i) Special purpose financial captive insurer securities means the securities issued by a special purpose financial captive insurer.

(3)(a) The provisions of the Captive Insurers Act, other than those in subdivision (3)(b) of this section, apply to a special purpose financial captive insurer. If a conflict occurs between a provision of the act not in this section and a provision of this section, the latter controls.

(b) The requirements of this section shall not apply to specific special purpose financial captive insurers if the director finds a specific requirement is inappropriate due to the nature of the risks to be insured by the special purpose financial captive insurer and if the special purpose financial captive insurer meets criteria established by rules and regulations adopted and promulgated by the director.

(4) A special purpose financial captive insurer may be established as a stock corporation, limited liability company, partnership, or other form of organization approved by the director.

(5)(a) A special purpose financial captive insurer may not issue a contract for assumption of risk or indemnification of loss other than a special purpose financial captive insurer contract. However, the special purpose financial captive insurer may cede risks assumed through a special purpose financial captive insurer contract to third-party reinsurers through the purchase of reinsurance or retrocession protection if approved by the director.

(b) A special purpose financial captive insurer may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the special purpose financial captive insurer contract, insurance securitization, and this section. Those activities may include, but are not limited to: Entering into special purpose financial captive insurer contracts; issuing securities of the special purpose financial captive insurer in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this section and in the plan of operation approved by the director.

(6)(a) A special purpose financial captive insurer may issue securities, subject to and in accordance with applicable law, its approved plan of operation, and its organization documents.

(b) A special purpose financial captive insurer, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) The obligation to repay principal or interest, or both, on the securities issued by the special purpose financial captive insurer shall be designed to reflect the risk associated with the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract.

(7) A special purpose financial captive insurer may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, prepayment, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to a special purpose financial captive insurer insurance securitization transaction or the obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract or for any other purpose approved by the director. All asset management agreements entered into by the special purpose financial captive insurer must be approved by the director.

(8)(a) A special purpose financial captive insurer, at any given time, may enter into and effectuate a special purpose financial captive insurer contract with a counterparty if the special purpose financial captive insurer contract obligates the special purpose financial captive insurer to indemnify the counterparty for losses and contingent obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract are securitized through a special purpose financial captive insurer insurance securitization, which security for such obligations may be funded and secured with assets held in trust for the benefit of the counterparty pursuant to agreements contemplated by this section and invested in a manner that meet the criteria as provided in section 44-8211.

(b) A special purpose financial captive insurer may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the special purpose financial captive insurer contract. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in this section.

(c) A special purpose financial captive insurer contract must contain provisions that:

(i) Require the special purpose financial captive insurer to either (A) enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty and the security holders or (B) establish such other method of security acceptable to the director;

(ii) Stipulate that assets deposited in the trust account must be valued in accordance with their current fair market value and must consist only of permitted investments;

(iii) If a trust arrangement is used, require the special purpose financial captive insurer, before depositing assets with the trustee, to execute assignments, to execute endorsements in blank, or to take such actions as are necessary to transfer legal title to the trustee of all shares, obligations, or other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the special purpose financial captive insurer or another entity; and

(iv) If a trust arrangement is used, stipulate that the special purpose financial captive insurer and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the special purpose financial captive insurer contract, may be withdrawn by the counterparty, or the trustee on its behalf, at any time, only in accordance with the terms of the special purpose financial captive insurer contract, and must be utilized and applied by the counterparty or any successor of the counterparty by operation of law, including, subject to the provisions of this section, but without further limitation, any liquidator, rehabilitator, or receiver of the counterparty, without diminution because of insolvency on the part of the counterparty or the special purpose financial captive insurer, only for the purposes set forth in the credit for reinsurance laws and rules and regulations of this state.

(d) The special purpose financial captive insurer contract may contain provisions that give the special purpose financial captive insurer the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the special purpose financial captive insurer if such provisions comply with the credit for reinsurance laws and rules and regulations of this state.

(9) A special purpose financial captive insurer contract meeting the provisions of this section must be granted credit for reinsurance treatment or otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to a special purpose financial captive insurer as an assuming insurer for the benefit of the counterparty if and only to the extent:

(a) Of the value of the assets held in trust for, or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in section 44-416.08, or as approved by the director, for the benefit of the counterparty under the special purpose financial captive insurer contract; and

(b) The assets are held or invested in one or more of the forms allowed in section 44-8211.

(10)(a)(i) Notwithstanding the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the director may apply to the district court of Lancaster County for an order authorizing the director to rehabilitate or liquidate a special purpose financial captive insurer domiciled in this state on one or more of the following grounds:

(A) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurer intended to be used to pay amounts owed to the counterparty or the holders of special purpose financial captive insurer securities; or

(B) The special purpose financial captive insurer is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose financial captive insurer securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this section.

(ii) The court may not grant relief provided by subdivision (10)(a)(i) of this section unless, after notice and a hearing, the director establishes that relief must be granted.

(b) Notwithstanding any other applicable law, rule, or regulation, upon any order of rehabilitation or liquidation of a special purpose financial captive insurer, the receiver shall manage the assets and liabilities of the special

purpose financial captive insurer pursuant to the provisions of subsection (11) of this section.

(c) With respect to amounts recoverable under a special purpose financial captive insurer contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the special purpose financial captive insurer insurance securitization.

(d) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, with respect to a counterparty does not prohibit the transaction of a business by a special purpose financial captive insurer, including any payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security, or any action or proceeding against a special purpose financial captive insurer or its assets.

(e) Notwithstanding the provisions of any applicable law or rule or regulation, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a special purpose financial captive insurer, and any order issued by the court, does not prohibit the payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security or special purpose financial captive insurer contract or the special purpose financial captive insurer from taking any action required to make the payment.

(f) Notwithstanding the provisions of any other applicable law, rule, or regulation:

(i) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive insurer of money or other property made pursuant to a special purpose financial captive insurer contract; and

(ii) A receiver of a special purpose financial captive insurer may not void a nonfraudulent transfer by the special purpose financial captive insurer of money or other property made to a counterparty pursuant to a special purpose financial captive insurer contract or made to or for the benefit of any holder of a special purpose financial captive insurer security on account of the special purpose financial captive insurer security.

(g) With the exception of the fulfillment of the obligations under a special purpose financial captive insurer contract, and notwithstanding the provisions of any other applicable law or rule or regulation, the assets of a special purpose financial captive insurer, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this section for any purpose including, without limitation, distribution to creditors of the counterparty.

(11) A special purpose financial captive insurer may not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no instance shall the dividends decrease the capital of the special purpose financial captive insurer below two hundred fifty thousand dollars, and, after giving effect to the dividends, the assets of the special purpose financial captive insurer, including any assets held in trust pursuant to the terms of the insurance securitization,

must be sufficient to satisfy the director that it can meet its obligations. Approval by the director of an ongoing plan for the payment of dividends, interest on securities, or other distribution by a special purpose financial captive insurer must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the special purpose financial captive insurer by, the director.

(12) Information submitted pursuant to the provisions of this section shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the special purpose financial captive insurer unless the director, after giving the special purpose financial captive insurer notice and opportunity to be heard, determines that the best interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

Source: Laws 2007, LB117, § 50.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

44-8217 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Captive Insurers Act.

Source: Laws 2007, LB117, § 51.

44-8218 Applicability of insurance laws.

(1) The insurance laws of this state shall not apply to captive insurers except as permitted in the Captive Insurers Act.

(2) The following provisions of Chapter 44 apply to captive insurers:

(a) The Insurers Examination Act;

(b) Sections 44-101, 44-101.01, 44-102, 44-103, 44-114, 44-116, 44-154, 44-205.01, 44-231, 44-301, 44-318, 44-320, 44-326, and 44-360; and

(c) The Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. Such act shall only apply to a captive insurer that provides insurance and reinsurance to a parent or affiliated entity that is an insurer.

Source: Laws 2007, LB117, § 52.

Cross References

Insurers Examination Act, see section 44-5901.
Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

ARTICLE 83

DISCOUNT MEDICAL PLAN ORGANIZATION ACT

Section
44-8301. Act, how cited.
44-8302. Purpose of act.

Section

44-8301 Act, how cited.

Sections 44-8301 to 44-8316 shall be known and may be cited as the Discount Medical Plan Organization Act.

Source: Laws 2008, LB855, § 33.

44-8302 Purpose of act.

The purpose of the Discount Medical Plan Organization Act is to promote the public interest by establishing standards for discount medical plan organizations to protect consumers from unfair or deceptive marketing, sales, or enrollment practices and to facilitate consumer understanding of the role and function of discount medical plan organizations in providing access to medical or ancillary services.

Source: Laws 2008, LB855, § 34.

44-8303 Terms, defined.

For purposes of the Discount Medical Plan Organization Act:

(1) Affiliate means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(2) Ancillary services includes, but is not limited to, audiology, dental, vision, mental health, substance abuse, chiropractic, and podiatry services;

(3) Control or controlled by or under common control with means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person;

(4) Director means the Director of Insurance;

(5)(a) Discount medical plan means a business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, offers access for its members to providers of medical or ancillary services and the right to receive discounts on medical or ancillary services provided under the discount medical plan from those providers.

(b) Discount medical plan does not include a plan that does not charge a membership or other fee to use the plan's discount medical card;

(6) Discount medical plan organization means an entity that, in exchange for fees, dues, charges, or other consideration, provides access for discount medical plan members to providers of medical or ancillary services and the right to receive medical or ancillary services from those providers at a discount. It is the organization that contracts with providers, provider networks, or other discount medical plan organizations to offer access to medical or ancillary services at a discount and determines the charge to discount medical plan members;

(7) Facility means an institution providing medical or ancillary services or a health care setting. Facility includes, but is not limited to:

(a) A hospital or other licensed inpatient center;

(b) An ambulatory surgical or treatment center;

(c) A skilled nursing center;

(d) A residential treatment center;

(e) A rehabilitation center; and

(f) A diagnostic, laboratory, or imaging center;

(8) Health care professional means a physician, pharmacist, or other health care practitioner who is licensed, accredited, or certified to perform specified medical or ancillary services within the scope of his or her license, accreditation, certification, or other appropriate authority and consistent with state law;

(9) Health carrier means an entity certified under and subject to the insurance laws and rules and regulations of this state or subject to the jurisdiction of the director that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or medical or ancillary services;

(10) Marketer means a person or entity that markets, promotes, sells, or distributes a discount medical plan including a private label entity that places its name on and markets or distributes a discount medical plan pursuant to a marketing agreement with a discount medical plan organization;

(11) Medical services means any maintenance care of, or preventive care for, the human body or care, service, or treatment of an illness or dysfunction of, or injury to, the human body. Medical services includes, but is not limited to, physician care, inpatient care, hospital surgical services, emergency services, ambulance services, laboratory services, and medical equipment and supplies. Medical services does not include pharmacy services or ancillary services;

(12) Member means any individual who pays fees, dues, charges, or other consideration for the right to receive the benefits of a discount medical plan;

(13) Person means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, or any similar entity or any combination of the foregoing;

(14) Provider means any health care professional or facility that has contracted, directly or indirectly, with a discount medical plan organization to provide medical or ancillary services to members; and

(15) Provider network means an entity that negotiates directly or indirectly with a discount medical plan organization on behalf of more than one provider to provide medical or ancillary services to members.

Source: Laws 2008, LB855, § 35.

44-8304 Control; presumption.

Control as used in the Discount Medical Plan Organization Act is presumed to exist if any person, directly or indirectly, owns, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided in subsection (11) of section 44-2132 that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Source: Laws 2008, LB855, § 36.

44-8305 Applicability of act.

(1) The Discount Medical Plan Organization Act applies to all discount medical plan organizations doing business in or from this state.

(2) A discount medical plan organization that is a health carrier is not required to obtain a certificate of registration under section 44-8306, except that each of its affiliates that operates as a discount medical plan organization in this state shall obtain a certificate of registration under section 44-8306 and comply with all other provisions of the act. The discount medical plan organization is required to comply with sections 44-8308 to 44-8311 and report, in the form and manner as the director may require, any of the information described in subsection (2) of section 44-8313 that is not otherwise already reported.

(3) A provider who provides discounts to his or her own patients without any cost or fee of any kind to the patient is not required to obtain and maintain a certificate of registration under the act as a discount medical plan organization.

Source: Laws 2008, LB855, § 37.

44-8306 Certificate of registration; application; fee; director; duties; renewal; application; fee; disciplinary actions; grounds; hearing; cease and desist order; penalty.

(1) Before doing business in or from this state as a discount medical plan organization, a discount medical plan organization:

(a) May transact business in this state under Chapter 21; and

(b) Shall obtain a certificate of registration from the director to operate as a discount medical plan organization.

(2) Each application for a certificate of registration to operate as a discount medical plan organization shall:

(a) Be in a form prescribed by the director and verified by an officer or authorized representative of the applicant;

(b) Be accompanied by an application fee not to exceed five hundred dollars;

(c) Include information on whether:

(i) A previous application for a certificate of registration or licensure has been denied, revoked, suspended, or terminated for cause in any jurisdiction; and

(ii) The applicant is under investigation for or the subject of any pending action or has been found in violation of a statute or regulation in any jurisdiction within the previous five years; and

(d) Include information as the director may require that permits the director, after reviewing all of the information submitted pursuant to this subsection, to make a determination that the applicant:

(i) Is financially responsible;

(ii) Has adequate expertise or experience to operate a discount medical plan organization; and

(iii) Is of good character.

(3) After the receipt of an application filed pursuant to subsection (2) of this section, the director shall review the application and notify the applicant of any deficiencies in the application.

(4) No more than ninety days after the date of receipt of a completed application, the director shall issue a certificate of registration if the director is satisfied that the applicant has met the requirements of subsection (2) of this section or shall deny the application and state the grounds for denial.

(5) Prior to issuance of a certificate of registration by the director, each discount medical plan organization shall establish an Internet web site in order to conform to the requirements of subsection (2) of section 44-8309.

(6)(a) A registration is effective for one year unless before its expiration it is renewed in accordance with this subsection or suspended or revoked in accordance with subsection (7) of this section.

(b) At least ninety days before a certificate of registration is set to expire, the discount medical plan organization shall submit:

(i) A renewal application form; and

(ii) The renewal fee.

(c) The director shall renew the certificate of registration of each holder that meets the requirements of the Discount Medical Plan Organization Act and pays the renewal fee of three hundred dollars.

(7)(a) The director may suspend or revoke a certificate of registration after notice and hearing held in accordance with the Administrative Procedure Act if the director finds that any of the following conditions exist:

(i) The discount medical plan organization is not operating in compliance with the Discount Medical Plan Organization Act;

(ii) The discount medical plan organization has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising;

(iii) The discount medical plan organization is not fulfilling its obligations as a discount medical plan organization; or

(iv) The continued operation of the discount medical plan organization would be hazardous to its members.

(b) If the director has cause to believe that grounds for the denial or nonrenewal of a certificate of registration exist, the director shall notify the discount medical plan organization in writing specifically stating the grounds for the refusal to grant or renew the certificate of registration. The applicant or registrant has thirty days after receipt of such notification to demand a hearing. The hearing shall be held no more than thirty days after receipt of such demand by the director and shall be held in accordance with the Administrative Procedure Act.

(c)(i) The director shall, in his or her order suspending the authority of the discount medical plan organization to enroll new members, specify the period during which the suspension is to be in effect and the conditions, if any, that must be met by the discount medical plan organization prior to reinstatement of its certificate of registration to enroll members.

(ii) The director may rescind or modify the order of suspension prior to the expiration of the suspension period.

(iii) The certificate of registration of a discount medical plan organization shall not be reinstated unless requested by the discount medical plan organization. The director shall not grant the request for reinstatement if the director finds that the circumstances for which the suspension occurred still exist or are likely to recur.

(8) In lieu of suspending or revoking a discount medical plan organization's certificate of registration under subsection (7) of this section, if the discount medical plan organization has violated any provision of the Discount Medical Plan Organization Act, the director may:

(a) Issue and cause to be served upon the organization charged with the violation a copy of the findings and an order requiring the organization to cease and desist from engaging in the act or practice that constitutes the violation; and

(b) Impose a monetary penalty of not more than one thousand dollars for each violation.

(9) Each registered discount medical plan organization shall notify the director immediately whenever the discount medical plan organization's certificate of registration or other form of authority to operate as a discount medical plan organization in another state is suspended, revoked, or not renewed in that state.

Source: Laws 2008, LB855, § 38.

Cross References

Administrative Procedure Act, see section 84-920.

44-8307 Director; examination or investigation; powers; expenses.

(1) The director may examine or investigate the business and affairs of any discount medical plan organization to protect the interests of the residents of this state based on the following reasons, including, but not limited to, com-

plaint indices, recent complaints, information from other states, or as the director deems necessary.

(2) An examination or investigation conducted as provided in subsection (1) of this section shall be performed in accordance with the provisions of the Insurers Examination Act.

(3) The director may:

(a) Order any discount medical plan organization or applicant that operates a discount medical plan organization to produce any records, books, files, advertising and solicitation materials, or other information; and

(b) Take statements under oath to determine whether the discount medical plan organization or applicant is in violation of the law or is acting contrary to the public interest.

(4) The discount medical plan organization or applicant that is the subject of the examination or investigation shall pay the expenses incurred in conducting the examination or investigation. Failure by the discount medical plan organization or applicant to pay such expenses is grounds for denial of a certificate of registration to operate as a discount medical plan organization or revocation of a certificate of registration to operate as a discount medical plan organization.

Source: Laws 2008, LB855, § 39.

Cross References

Insurers Examination Act, see section 44-5901.

44-8308 Charges authorized; right to cancel membership; plan sold in conjunction with other products; duties.

(1) A discount medical plan organization may charge a periodic charge as well as a reasonable one-time processing fee for a discount medical plan.

(2)(a)(i) If a member cancels his or her membership in the discount medical plan organization within thirty days after the date of receipt of the written document for the discount medical plan described in subsection (4) of section 44-8311, the member shall receive a reimbursement of all periodic charges and the amount of any one-time processing fee that exceeds thirty dollars upon return of the discount medical plan card to the discount medical plan organization.

(ii)(A) Cancellation occurs when notice of cancellation is given to the discount medical plan organization.

(B) Notice of cancellation is deemed given when delivered by hand or deposited in a mailbox, properly addressed, and postage prepaid to the mailing address of the discount medical plan organization.

(iii) A discount medical plan organization shall return any periodic charge charged or collected after the member has returned the discount medical plan card or given the discount medical plan organization notice of cancellation.

(b) If the discount medical plan organization cancels a membership for any reason other than nonpayment of charges by the member, the discount medical plan organization shall make a pro rata reimbursement of all periodic charges to the member.

(3) When a marketer or discount medical plan organization sells a discount medical plan in conjunction with any other products, the marketer or discount medical plan organization shall:

(a) Provide the charges for each discount medical plan in writing to the member; or

(b) Reimburse the member for all periodic charges for the discount medical plan if the member cancels his or her membership in accordance with subdivision (2)(a) of this section.

(4) Any discount medical plan organization that is a health carrier that provides a discount medical plan product that is incidental to the insured product is not subject to this section.

Source: Laws 2008, LB855, § 40.

44-8309 Written provider agreement required; contents; Internet web site; information required; toll-free telephone number.

(1)(a) A discount medical plan organization shall have a written provider agreement with all providers offering medical or ancillary services to its members. The written provider agreement may be entered into directly with the provider or indirectly with a provider network to which the provider belongs.

(b) A provider agreement between a discount medical plan organization and a provider shall provide the following:

(i) A list of the medical or ancillary services and products to be provided at a discount;

(ii) The amount or amounts of the discounts or, alternatively, a fee schedule that reflects the provider's discounted rates; and

(iii) That the provider will not charge members more than the discounted rates.

(c) A provider agreement between a discount medical plan organization and a provider network shall require that the provider network have written agreements with its providers that:

(i) Contain the provisions described in subdivision (1)(b) of this section;

(ii) Authorize the provider network to contract with the discount medical plan organization on behalf of the provider; and

(iii) Require the provider network to maintain an up-to-date list of its contracted providers and to provide the list on a monthly basis to the discount medical plan organization.

(d) A provider agreement between a discount medical plan organization and an entity that contracts with a provider network shall require that the entity, in its contract with the provider network, require the provider network to have written agreements with its providers that comply with subdivision (1)(c) of this section.

(e) The discount medical plan organization shall maintain a copy of each active provider agreement into which it has entered.

(2) Each discount medical plan organization shall maintain on an Internet web site an up-to-date list of the names and addresses of the providers with which it has contracted directly or through a provider network. The web site address shall be prominently displayed on all of its advertisements, marketing materials, brochures, and discount medical plan cards. This subsection applies to those providers with which the discount medical plan organization has contracted directly as well as those providers that are members of a provider network with which the discount medical plan organization has contracted.

(3) Each discount medical plan organization shall maintain a toll-free telephone number for members to obtain additional information about and assistance on the discount medical plan and an up-to-date list of the names and addresses of the providers with which it has contracted directly or through a provider network. The toll-free telephone number shall be prominently displayed on all of its advertisements, marketing materials, brochures, and discount medical plan cards. Capable and competent personnel shall staff the toll-free telephone number.

Source: Laws 2008, LB855, § 41.

44-8310 Marketing; written agreement required; approval of advertising; powers of director.

(1) A discount medical plan organization may market directly or contract with other marketers for the distribution of its product.

(2)(a) The discount medical plan organization shall have an executed written agreement with each marketer prior to the marketer's marketing, promoting, selling, or distributing the discount medical plan.

(b) The agreement between the discount medical plan organization and the marketer shall prohibit the marketer from using advertising, marketing materials, brochures, and discount medical plan cards without the discount medical plan organization's approval in writing.

(c) The discount medical plan organization shall be bound by and responsible for the activities of a marketer that are within the scope of the marketer's agency relationship with the organization.

(3) A discount medical plan organization shall approve in writing all advertisements, marketing materials, brochures, and discount cards used by marketers to market, promote, sell, or distribute the discount medical plan prior to their use.

(4) Upon request, a discount medical plan organization shall submit to the director all advertising, marketing materials, and brochures regarding a discount medical plan.

Source: Laws 2008, LB855, § 42.

44-8311 Communications to prospective members and members; requirements; disclosures required; new member; terms and conditions of plan; information included.

(1)(a) All advertisements, marketing materials, brochures, discount medical plan cards, and any other communications of a discount medical plan organization provided to prospective members and members shall be truthful and not misleading in fact or in implication.

(b) Any advertisement, marketing material, brochure, discount medical plan card, or other communication is misleading in fact or in implication if it has a capacity or tendency to mislead or deceive based on the overall impression that it is reasonably expected to create within the segment of the public to which it is directed.

(2)(a) Except as otherwise provided in the Discount Medical Plan Organization Act, as a disclaimer of any relationship between discount medical plan benefits and insurance, or as a description of an insurance product connected with a discount medical plan, a discount medical plan organization shall not

use in its advertisements, marketing materials, brochures, or discount medical plan cards the term insurance.

(b) Except as otherwise provided in state law, a discount medical plan organization shall not describe or characterize the discount medical plan as being insurance whenever a discount medical plan is bundled with an insurance product and the insurance benefits are incidental to the discount medical plan benefits.

(c) A discount medical plan organization shall not:

(i) Use in its advertisements, marketing materials, brochures, or discount medical plan cards the terms health plan, coverage, copay, copayment, deductible, preexisting condition, guaranteed issue, premium, PPO, preferred provider organization, or other terms in a manner that could reasonably mislead an individual into believing that the discount medical plan is health insurance;

(ii) Use language in its advertisements, marketing materials, brochures, or discount medical plan cards with respect to being licensed or registered by a state insurance department in a manner that could reasonably mislead an individual into believing that the discount medical plan is insurance or has been endorsed by a state;

(iii) Make misleading, deceptive, or fraudulent representations regarding the discount or range of discounts offered by the discount medical plan card or the access to any range of discounts offered by the discount medical plan card;

(iv) Have restrictions on access to discount medical plan providers, including waiting periods and notification periods, except for hospital services; or

(v) Pay providers any fees for medical or ancillary services or collect or accept money from a member to pay a provider for medical or ancillary services provided under the discount medical plan unless the discount medical plan organization has an active certificate of authority to act as a third-party administrator in accordance with the Third-Party Administrator Act.

(3)(a) Each discount medical plan organization shall make the following general disclosures in writing in not less than twelve-point font on the first content page of any advertisement, marketing material, or brochure made available to the public relating to a discount medical plan together with any enrollment forms given to a prospective member:

(i) That the plan is a discount plan and is not insurance coverage;

(ii) That the range of discounts for medical or ancillary services provided under the plan will vary depending on the type of provider and medical or ancillary service received;

(iii) Unless the discount medical plan organization has an active certificate of authority to act as a third-party administrator as described in subdivision (2)(c)(v) of this section, that the plan does not make payments to providers for the medical or ancillary services received under the discount medical plan;

(iv) That the plan member is obligated to pay for all medical or ancillary services but will receive a discount from those providers that have contracted with the discount medical plan organization; and

(v) The toll-free telephone number and Internet web site address for the registered discount medical plan organization for prospective members and members to obtain additional information about and assistance on the discount

medical plan and an up-to-date list of providers participating in the discount medical plan.

(b) If the initial contact with a prospective member is by telephone, the disclosures required under subdivision (a) of this subsection shall be made orally and included in the initial written materials that describe the benefits under the discount medical plan provided to the prospective or new member.

(4)(a) In addition to the general disclosures required under subsection (3) of this section, each discount medical plan organization shall provide to:

(i) Each prospective member, at the time of enrollment, information that describes the terms and conditions of the discount medical plan, including any limitations or restrictions on the refund of any processing fees or periodic charges associated with the discount medical plan; and

(ii) Each new member a written document that contains the terms and conditions of the discount medical plan.

(b) The written document required under subdivision (a)(ii) of this subsection shall be clear and include the following information:

(i) The name of the member;

(ii) The benefits to be provided under the discount medical plan;

(iii) Any processing fees and periodic charges associated with the discount medical plan, including any limitations or restrictions on the refund of any processing fees and periodic charges;

(iv) The frequency of payment of any processing fees and periodic charges and procedures for changing the frequency of payment;

(v) Any limitations, exclusions, or exceptions regarding the receipt of discount medical plan benefits;

(vi) Any waiting periods for certain medical or ancillary services under the discount medical plan;

(vii) Procedures for obtaining discounts under the discount medical plan, such as requiring members to contact the discount medical plan organization to make an appointment with a provider on the member's behalf;

(viii) Cancellation procedures, including information on the member's thirty-day cancellation rights and refund requirements and procedures for obtaining refunds;

(ix) Renewal, termination, and cancellation terms and conditions;

(x) Procedures for adding new members to a family discount medical plan, if applicable;

(xi) Procedures for filing complaints under the discount medical plan organization's complaint system and information that, if the member remains dissatisfied after completing the organization's complaint system, the plan member may contact his or her state insurance department; and

(xii) The name, toll-free telephone number, and mailing address of the discount medical plan organization or other entity where the member can make inquiries about the plan, send cancellation notices, and file complaints.

Source: Laws 2008, LB855, § 43.

Cross References

Third-Party Administrator Act, see section 44-5801.

44-8312 Change in information; notice to director.

Each discount medical plan organization shall provide the director notice of any change in the discount medical plan organization's name, address, telephone number, principal business address or mailing address, or Internet web site address no less than thirty days before such change is to occur.

Source: Laws 2008, LB855, § 44.

44-8313 Annual report; contents; failure to file; effect.

(1) If the information required in subsection (2) of this section is not provided at the time of renewal of a certificate of registration under section 44-8306, a discount medical plan organization shall file an annual report with the director in the form prescribed by the director within three months after the end of each fiscal year.

(2) The report shall include:

(a) If different from the initial application for a certificate of registration or at the time of renewal of a certificate of registration, a list of the names and residence addresses of all persons responsible for the conduct of the organization's affairs, together with a disclosure of the extent and nature of any contracts or arrangements with such persons and the discount medical plan organization, including any possible conflicts of interest;

(b) The number of discount medical plan members in the state; and

(c) Any other information relating to the performance of the discount medical plan organization that may be required by the director.

(3)(a) Any discount medical plan organization that fails to file an annual report in the form and within the time required by this section shall forfeit:

(i) Up to five hundred dollars each day for the first ten days during which the violation continues; and

(ii) Up to one thousand dollars each day after the first ten days during which the violation continues.

(b) Upon notice by the director, the discount medical plan organization described in subdivision (a) of this subsection shall lose its authority to enroll new members or to do business in this state if the violation continues.

Source: Laws 2008, LB855, § 45.

44-8314 Violation; unfair trade practice; administrative penalty; fraudulent insurance act; restitution.

(1) A violation of the Discount Medical Plan Organization Act shall be an unfair trade practice under the Unfair Insurance Trade Practices Act.

(2) In addition to the penalties and other enforcement provisions of the Discount Medical Plan Organization Act, any person who willfully violates the act is subject to administrative penalties of up to one thousand dollars per violation.

(3) A person that willfully operates as or aids and abets another operating as a discount medical plan organization in violation of subsection (1) of section 44-8306 commits a fraudulent insurance act under section 28-631.

(4) A person that collects fees for purported membership in a discount medical plan but purposefully fails to provide the promised benefits commits a

fraudulent insurance act under section 28-631. In addition, upon conviction, such person shall be ordered to pay restitution to persons aggrieved by the violation of the act. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of such fine or imprisonment.

Source: Laws 2008, LB855, § 46.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-8315 Violations of act; cease and desist order; hearing; appeal; director; additional powers.

(1) The director may issue an order directing a discount medical plan organization to cease and desist from engaging in any action or practice in violation of the Discount Medical Plan Organization Act. Within ten days after service of the cease and desist order, the organization may request a hearing on the question of whether an action or practice in violation of the act has occurred. Such hearing shall be conducted as provided by the Administrative Procedure Act. The organization may appeal the decision of the director. Such appeal shall be in accordance with the Administrative Procedure Act.

(2)(a) In addition to the penalties and other enforcement provisions of the Discount Medical Plan Organization Act, the director may seek both temporary and permanent injunctive relief when:

(i) A discount medical plan is being operated by a person or entity that is not registered pursuant to the act; or

(ii) Any person, entity, or discount medical plan organization has engaged in any activity prohibited by the act or any rules or regulations adopted and promulgated pursuant to the act.

(b) The district court of Lancaster County shall have exclusive jurisdiction over any proceeding brought pursuant to this section.

(3) The director's authority to seek relief under this section is not conditioned upon having conducted any proceeding pursuant to the provisions of the Administrative Procedure Act.

Source: Laws 2008, LB855, § 47.

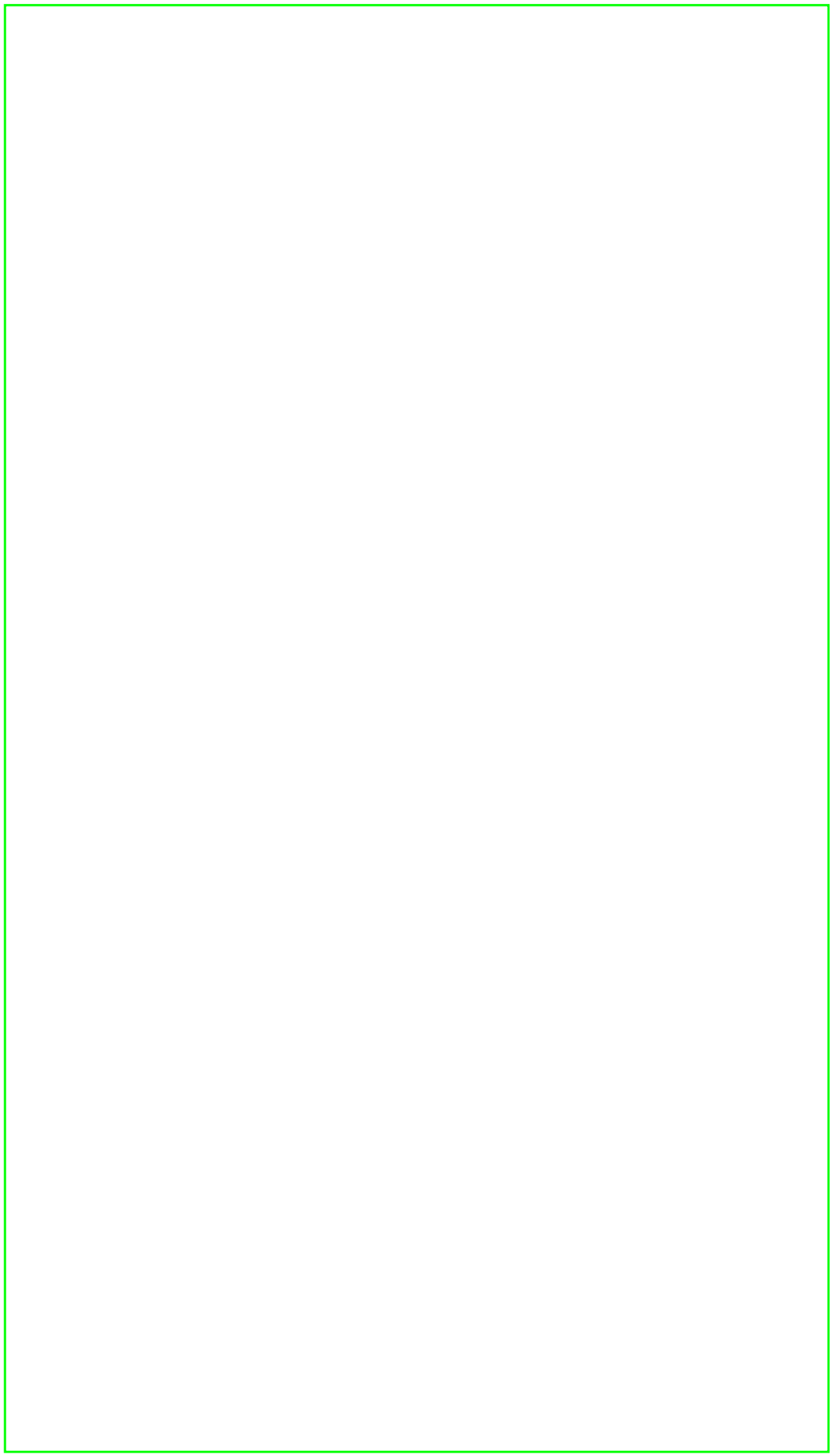
Cross References

Administrative Procedure Act, see section 84-920.

44-8316 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the provisions of the Discount Medical Plan Organization Act.

Source: Laws 2008, LB855, § 48.



CHAPTER 45
INTEREST, LOANS, AND DEBT

ARTICLE 1
INTEREST RATES AND LOANS

(a) GENERAL PROVISIONS

(f) LOAN BROKERS

(i) CONSUMER CREDIT DEFAULT PROCEDURES

(a) GENERAL PROVISIONS

45-101.04 General interest rate; maximum; when not applicable.

The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, the Nebraska Installment Loan Act, subsection (4) of section 8-319, or sections 8-815 to 8-829;

(2) Loans made to any corporation, partnership, limited liability company, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, limited liability company, or trust;

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (15) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or secured by real property when such loans are made (a) by a licensee, registrant, or permittee operating under a license, registration, or permit duly issued by the Department of Banking and Finance except for licensees operating under the Nebraska Installment Loan Act, (b) by any financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, or (c) by any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;

(11) Loans secured solely by real property when such loans are (a) made by licensees operating under the Nebraska Installment Loan Act and (b) made to finance or refinance the purchase of the property or construction on or improvements to the property, if the Department of Banking and Finance has the authority to examine such loans for compliance with sections 45-101.02 and 45-101.03. A licensee making a loan pursuant to this subdivision may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan;

(12) Loans secured by a reverse mortgage pursuant to section 45-702.01;

(13) Interest charges made on any goods or services sold under an installment contract pursuant to the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing; or

(14) Fees which may be charged by a licensee for services pursuant to the Delayed Deposit Services Licensing Act.

Source: Laws 1975, LB 349, § 3; Laws 1976, LB 616, § 1; Laws 1979, LB 390, § 2; Laws 1980, LB 276, § 7; Laws 1980, LB 279, § 4; Laws 1982, LB 623, § 1; Laws 1986, LB 143, § 1; Laws 1988, LB 795, § 5; Laws 1989, LB 272, § 2; Laws 1993, LB 121, § 263; Laws 1993, LB 216, § 11; Laws 1994, LB 979, § 7; Laws 1994, LB 967, § 30; Laws 1995, LB 397, § 1; Laws 1996, LB 948, § 124; Laws 1997, LB 335, § 12; Laws 1999, LB 396, § 24; Laws 2001, LB 53, § 28; Laws 2003, LB 131, § 25; Laws 2004, LB 999, § 31; Laws 2010, LB892, § 2.
Effective date March 4, 2010.

Cross References

Credit Union Act, see section 21-1701.
Delayed Deposit Services Licensing Act, see section 45-901.
Nebraska Installment Loan Act, see section 45-1001.
Nebraska Installment Sales Act, see section 45-334.

(f) LOAN BROKERS

45-190 Terms, defined.

For purposes of sections 45-189 to 45-191.11, unless the context otherwise requires:

(1) Advance fee means any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and includes, but is not limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

(2) Borrower means a person obtaining or desiring to obtain a loan of money;

(3) Department means the Department of Banking and Finance;

(4) Director means the Director of Banking and Finance;

(5) Loan broker means any person, except any bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, credit union, licensed or registered mortgage banker, Federal Housing Administration or United States Department of Veterans Affairs approved lender as long as the loan of money made by the Federal Housing Administration or the United States Department of Veterans Affairs approved lender is secured or covered by guarantees or commitments or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs, credit card company, installment loan licensee, or insurance company which is subject to regulation or supervision under the laws of the United States or this state, who:

(a) For or in expectation of an advance fee from a borrower, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(b) For or in expectation of an advance fee from a borrower, assists a borrower in making an application to obtain a loan of money;

(c) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(d) Holds himself or herself out, through advertising, signs, or other means, as a loan broker;

(6) Loan brokerage agreement means any agreement for services between a loan broker and a borrower; and

(7) Person means natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

Source: Laws 1981, LB 154, § 2; Laws 1982, LB 751, § 1; Laws 1985, LB 86, § 1; Laws 1989, LB 272, § 3; Laws 1993, LB 121, § 271; Laws 1993, LB 270, § 1; Laws 1995, LB 599, § 11; Laws 2001, LB 53, § 87; Laws 2003, LB 131, § 26; Laws 2009, LB327, § 16.

45-191.01 Loan brokerage agreement; written disclosure statement; requirements.

(1) At least forty-eight hours before the borrower signs a loan brokerage agreement, the loan broker shall give the borrower a written disclosure statement. The cover sheet of the disclosure statement shall have printed, in at least ten-point boldface capital letters, the title DISCLOSURES REQUIRED BY NEBRASKA LAW. The following statement, printed in at least ten-point type, shall appear under the title:

THE STATE OF NEBRASKA HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE, OR SPONSOR ANY LOAN BROKERAGE AGREEMENT. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THE STATE. IF YOU HAVE QUESTIONS, SEEK LEGAL ADVICE BEFORE YOU SIGN A LOAN BROKERAGE AGREEMENT.

Only the title and the statement shall appear on the cover sheet.

(2) The body of the disclosure statement shall contain the following information:

(a) The name, street address, and telephone number of the loan broker, the names under which the loan broker does, has done, or intends to do business, the name and street address of any parent or affiliated company, and the electronic mail and Internet address of the loan broker, if any;

(b) A statement as to whether the loan broker does business as an individual, partnership, corporation, or other organizational form, including identification of the state of incorporation or formation;

(c) How long the loan broker has done business;

(d) The number of loan brokerage agreements the loan broker has entered into in the previous twelve months;

(e) The number of loans the loan broker has obtained for borrowers in the previous twelve months;

(f) A description of the services the loan broker agrees to perform for the borrower;

(g) The conditions under which the borrower is obligated to pay the loan broker. This disclosure shall be in boldface type;

(h) The names, titles, and principal occupations for the past five years of all officers, directors, or persons occupying similar positions responsible for the loan broker's business activities;

(i) A statement whether the loan broker or any person identified in subdivision (h) of this subsection:

(i) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(ii) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful, or deceptive business practices; or

(iii) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department including, but not limited to, action affecting any vocational license; and

(j) Any other information the director requires.

Source: Laws 1993, LB 270, § 3; Laws 2007, LB124, § 29.

45-191.04 Loan brokerage agreement; requirements; right to cancel.

(1) A loan brokerage agreement shall be in writing and shall be signed by the loan broker and the borrower. The loan broker shall furnish the borrower a copy of such signed loan brokerage agreement at the time the borrower signs it.

(2) The borrower has the right to cancel a loan brokerage agreement for any reason at any time within three business days after the date the parties sign the agreement. The loan brokerage agreement shall set forth the borrower's right to cancel and the procedures to be followed when an agreement is canceled.

(3) A loan brokerage agreement shall set forth in at least ten-point type, or handwriting of at least equivalent size, the following:

(a) The terms and conditions of payment;

(b) A full and detailed description of the acts or services the loan broker will undertake to perform for the borrower;

(c) The loan broker's principal business address, telephone number, and electronic mail and Internet address, if any, and the name, address, telephone number, and electronic mail and Internet address, if any, of its agent in the State of Nebraska authorized to receive service of process;

(d) The business form of the loan broker, whether a corporation, partnership, limited liability company, or otherwise; and

(e) The following notice of the borrower's right to cancel the loan brokerage agreement pursuant to this section:

''You have three business days in which you may cancel this agreement for any reason by mailing or delivering written notice to the loan broker. The three business days shall expire on . . . . . (last date to mail or deliver notice), and notice of cancellation should be mailed to . . . . . (loan broker's name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the loan broker directly, it must be delivered to the loan broker by the end of the normal business day on the above date. Within five business days after receipt of the notice of cancellation, the loan broker shall return to you all sums paid by you to the loan broker pursuant to this agreement.''

The notice shall be set forth immediately above the place at which the borrower signs the loan brokerage agreement.

Source: Laws 1993, LB 270, § 6; Laws 2001, LB 53, § 89; Laws 2007, LB124, § 30.

(i) CONSUMER CREDIT DEFAULT PROCEDURES

45-1,109 Consumer credit transactions; procedures; when applicable.

Sections 45-1,105 to 45-1,110 shall apply to all consumer credit transactions in this state subject to a security interest, as defined in subdivision (35) of section 1-201, Uniform Commercial Code, entered into, extended, or renewed on or after January 1, 1984.

Source: Laws 1983, LB 111, § 5; Laws 2005, LB 570, § 1.

ARTICLE 3
INSTALLMENT SALES

45-334 Act, how cited.

Sections 45-334 to 45-353 shall be known and may be cited as the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 1, p. 756; Laws 1994, LB 979, § 11; Laws 2007, LB124, § 31.

45-335 Terms, defined.

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

(1) Goods means all personal property, except money or things in action, and includes goods which, at the time of sale or subsequently, are so affixed to realty as to become part thereof whether or not severable therefrom;

(2) Services means work, labor, and services of any kind performed in conjunction with an installment sale but does not include services for which the prices charged are required by law to be established and regulated by the government of the United States or any state;

(3) Buyer means a person who buys goods or obtains services from a seller in an installment sale;

(4) Seller means a person who sells goods or furnishes services to a buyer under an installment sale;

(5) Installment sale means any transaction, whether or not involving the creation or retention of a security interest, in which a buyer acquires goods or services from a seller pursuant to an agreement which provides for a time-price differential and under which the buyer agrees to pay all or part of the time-sale price in one or more installments and within one hundred forty-five months, except that installment contracts for the purchase of mobile homes may exceed such one-hundred-forty-five-month limitation. Installment sale does not include a consumer rental purchase agreement defined in and regulated by the Consumer Rental Purchase Agreement Act;

(6) Installment contract means an agreement entered into in this state evidencing an installment sale except those otherwise provided for in separate acts;

(7) Cash price or cash sale price means the price stated in an installment contract for which the seller would have sold or furnished to the buyer and the buyer would have bought or acquired from the seller goods or services which are the subject matter of the contract if such sale had been a sale for cash instead of an installment sale. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements and may include taxes to the extent imposed on the cash sale;

(8) Basic time price means the cash sale price of the goods or services which are the subject matter of an installment contract plus the amount included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, registration, certificate of title, guaranteed asset protection waiver, and license fees, filing fees, an origination fee, and fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction or any charge for nonfiling insurance if such charge does not exceed the amount of fees and charges prescribed by law which would have been paid to public officials for filing, perfecting, releasing, and satisfying any security related to the credit transaction and less the amount of the buyer's downpayment in money or goods or both;

(9) Time-price differential, however denominated or expressed, means the amount, as limited in the Nebraska Installment Sales Act, to be added to the basic time price;

(10) Time-sale price means the total of the basic time price of the goods or services, the amount of the buyer's downpayment in money or goods or both, and the time-price differential;

(11) Sales finance company means a person purchasing one or more installment contracts from one or more sellers. Sales finance company includes, but is not limited to, a financial institution or installment loan licensee, if so engaged;

(12) Director means the Director of Banking and Finance;

(13) Financial institution has the same meaning as in section 8-101;

(14) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to cancel all or part of a buyer's obligation to repay an extension of credit from the financial institution upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment;

(15) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to suspend all or part of a buyer's obligation to repay an extension of credit from the financial institution upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term

debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment; and

(16) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act.

Source: Laws 1965, c. 268, § 2, p. 757; Laws 1965, c. 266, § 1, p. 751; Laws 1969, c. 379, § 1, p. 1340; Laws 1969, c. 380, § 1, p. 1343; Laws 1969, c. 381, § 1, p. 1345; Laws 1973, LB 455, § 1; Laws 1978, LB 373, § 1; Laws 1989, LB 94, § 1; Laws 1989, LB 681, § 16; Laws 1992, LB 269, § 1; Laws 2003, LB 217, § 34; Laws 2006, LB 876, § 25; Laws 2010, LB571, § 8.
Effective date July 15, 2010.

Cross References

Consumer Rental Purchase Agreement Act, see section 69-2101.
Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-336 Installment contract; requirements.

(1) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall contain the following items and a copy thereof shall be delivered to the buyer at the time the instrument is signed, except for contracts made in conformance with section 45-340: (a) The cash sale price; (b) the amount of the buyer's downpayment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of any goods traded in; (c) the difference between subdivisions (a) and (b) of this subsection; (d) the amount included for insurance if a separate charge is made therefor, specifying the types of coverages; (e) the amount included for a debt cancellation contract or a debt suspension contract if the debt cancellation contract or debt suspension contract is a contract of a financial institution, such contract is sold directly by such financial institution or by an unaffiliated, nonexclusive agent of such financial institution in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2006, and the financial institution is responsible for the unaffiliated, nonexclusive agent's compliance with such part, and a separate charge is made therefor; (f) the basic time price, which is the sum of subdivisions (c) and (d) of this subsection; (g) the time-price differential; (h) the amount of the time-price balance, which is the sum of subdivisions (f) and (g) of this subsection, payable in installments by the buyer to the seller; (i) the number, amount, and due date or period of each installment; (j) the time-sales price; and (k) the amount included for a guaranteed asset protection waiver.

(2) The contract shall contain substantially the following notice: NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.

(3) The items listed in subsection (1) of this section need not be stated in the sequence or order set forth in such subsection. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. No installment contract shall be signed by the buyer or proffered by seller when it contains blank spaces to be filled in after execution, except that if delivery of the goods or services is not made at the time of the

execution of the contract, the identifying numbers or marks of the goods, or similar information, and the due date of the first installment may be inserted in the contract after its execution.

(4) If a seller proffers an installment contract as part of a transaction which delays or cancels, or promises to delay or cancel, the payment of the time-price differential on the contract if the buyer pays the basic time price, cash price, or cash sale price within a certain period of time, the seller shall, in clear and conspicuous writing, either within the installment contract or in a separate document, inform the buyer of the exact date by which the buyer must pay the basic time price, cash price, or cash sale price in order to delay or cancel the payment of the time-price differential. The seller or any subsequent purchaser of the installment contract, including a sales finance company, shall not be allowed to change such date.

(5) Upon written request from the buyer, the holder of an installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(6) After payment of all sums for which the buyer is obligated under a contract, the holder shall deliver or mail to the buyer at his or her last-known address one or more good and sufficient instruments or copies thereof to acknowledge payment in full and shall release all security in the goods and mark canceled and return to the buyer the original agreement or copy thereof or instruments or copies thereof signed by the buyer. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

Source: Laws 1965, c. 268, § 3, p. 758; Laws 1994, LB 979, § 12; Laws 1994, LB 980, § 3; Laws 1999, LB 396, § 28; Laws 2006, LB 876, § 26; Laws 2010, LB571, § 9.
Effective date July 15, 2010.

45-340 Contracts negotiated by mail; requirements.

Installment contracts negotiated and entered into by mail without personal solicitation by salesmen or other representatives of the seller and based upon the catalog of the seller or other printed solicitation of business, which is distributed and made available generally to the public, if such catalog or other printed solicitation clearly sets forth the cash and time-sale prices and other terms of sales to be made through such medium, may be made as provided in this section. All provisions of the Nebraska Installment Sales Act shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in section 45-336 and if the contract when received by the seller contains any blank spaces the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller's catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in section 45-336, the seller shall furnish to the buyer a written statement of any items inserted in the blank spaces in the contract received from the buyer.

Source: Laws 1965, c. 268, § 7, p. 762; Laws 2007, LB124, § 32.

45-344 Excess charges; penalty.

If any seller or sales finance company, in the making or collection of an installment contract, shall, directly or indirectly, contract for, take, or receive

charges in excess of those authorized by the Nebraska Installment Sales Act except as a result of an accidental and bona fide error such contract shall be void and uncollectible as to (1) all of the excessive portion of the time-price differential, (2) the first one thousand dollars of the time-price differential authorized by section 45-338, and (3) the first four thousand dollars of the principal of the contract. If any seller or sales finance company violates any provision of the act, other than the violations described above, except as a result of an accidental and bona fide error, such installment contract shall be void and uncollectible as to the first five hundred dollars of the time-price differential and the first one thousand dollars of the principal of such contract. If any of such money has been paid by the buyer, such buyer or his or her assignee may recover under the act in a civil suit brought within one year after the due date, or any extension thereof, of the last installment of the contract.

Source: Laws 1965, c. 268, § 11, p. 763; Laws 2007, LB124, § 33.

45-346 License; application; issuance; bond; fee; term; director; duties; change of control of licensee; new application required.

(1) Each place of business operating under a license under the Nebraska Installment Sales Act shall have and properly display therein a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with the act as to each license.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include audited financial statements showing a minimum net worth of one hundred thousand dollars. If the applicant is an individual or a sole proprietorship, the application shall include the applicant's social security number.

(3) An applicant for a license shall file with the Department of Banking and Finance a surety bond in the amount of fifty thousand dollars, furnished by a surety company authorized to do business in this state. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant. The surety may cancel the bond only upon thirty days' written notice to the director.

(4) A license fee of one hundred fifty dollars shall be submitted along with each application.

(5) The license year shall begin on October 1 of each year. Each license shall remain in force until revoked, suspended, canceled, expired, or surrendered.

(6) The director shall, after an application has been filed for a license under the act, investigate the facts, and if he or she finds that the experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the act. The director shall have the power to reject for cause any application for a license.

(7) The director shall, within his or her discretion, make an examination and inspection concerning the propriety of the issuance of a license to any appli-

cant. The cost of such examination and inspection shall be borne by the applicant.

(8) If a change of control of a licensee is proposed, a new application for a license shall be submitted to the department. Control in the case of a corporation means (a) direct or indirect ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (b) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive.

Source: Laws 1965, c. 268, § 13, p. 764; Laws 1997, LB 752, § 116; Laws 2004, LB 999, § 35; Laws 2005, LB 533, § 47; Laws 2007, LB124, § 34.

45-346.01 Licensee; move of place of business; maintain minimum net worth; bond; existing licensee; how treated.

(1) A licensee may move its place of business from one place to another within a county without obtaining a new license if the licensee gives written notice thereof to the director at least ten days prior to such move.

(2) A licensee shall maintain the minimum net worth as required by section 45-346 while a license issued under the Nebraska Installment Sales Act is in effect. The minimum net worth shall be proven by an annual audit conducted by a certified public accountant. A licensee shall submit a copy of the annual audit to the director as required by section 45-348 or upon written request of the director. If a licensee fails to maintain the required minimum net worth, the Department of Banking and Finance may issue a notice of cancellation of the license in lieu of revocation proceedings.

(3) The surety bond or a substitute bond as required by section 45-346 shall remain in effect while a license issued under the Nebraska Installment Sales Act is in effect. If a licensee fails to maintain a surety bond or substitute bond, the licensee shall immediately cease doing business and surrender the license to the department. If the licensee does not surrender the license, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Until October 1, 2008, a licensee licensed prior to September 1, 2007, may operate with no net worth or bonding requirement as provided for at the time such licensee was originally licensed.

Source: Laws 2007, LB124, § 35; Laws 2009, LB327, § 17.

45-347 Fees; disposition.

All money collected under the authority of the Nebraska Installment Sales Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

Source: Laws 1965, c. 268, § 14, p. 764; Laws 1973, LB 39, § 5; Laws 1995, LB 599, § 13; Laws 2007, LB124, § 36.

45-348 License; renewal; licensee; duties; fee; voluntary surrender of license.

(1) Every licensee shall, on or before the first day of October, pay to the director the sum of one hundred fifty dollars for each license held as a license

fee for the succeeding year and submit such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including a copy of the licensee's most recent annual audit. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

(2) A licensee may voluntarily surrender a license at any time by delivering to the director written notice of the surrender. The Department of Banking and Finance shall issue a notice of cancellation of the license following such surrender.

(3) If a licensee fails to renew its license and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

Source: Laws 1965, c. 268, § 15, p. 765; Laws 2005, LB 533, § 48; Laws 2009, LB327, § 18.

45-350 License; denial of renewal; suspension; revocation; appeal.

(1) Renewal of a license originally granted under the Nebraska Installment Sales Act may be denied or a license may be suspended or revoked by the director on the following grounds: (a) Material misstatement in the application for license; (b) willful failure to comply with any provision of the Nebraska Installment Sales Act relating to installment contracts; (c) defrauding any buyer to the buyer's damage; or (d) fraudulent misrepresentation, circumvention, or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the buyer under the Nebraska Installment Sales Act.

(2) If a licensee is a partnership, limited liability company, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership or limited liability company has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual.

(3) No license shall be denied, suspended, or revoked except after hearing in accordance with the Administrative Procedure Act. The director shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of such hearing by either registered or certified mail addressed to the principal place of business in this state of such licensee. Such notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the director and shall not be effective until after thirty days' written notice thereof given after such entry forwarded by either registered or certified mail to the licensee at such principal place of business.

(4) Revocation, suspension, cancellation, expiration, or surrender of any license shall not impair or affect the obligation of any lawful installment contract acquired previously thereto by the licensee.

(5) Revocation, suspension, cancellation, expiration, or surrender of any license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, expiration, or surrender or affect liability for any fines which may be levied against the licensee or any of its officers,

directors, shareholders, partners, or members pursuant to the Nebraska Installment Sales Act for acts committed before the revocation, suspension, cancellation, expiration, or surrender.

(6) Any person, licensee, or applicant considering himself or herself aggrieved by an order of the director entered under the provisions of this section may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1965, c. 268, § 17, p. 766; Laws 1967, c. 276, § 3, p. 744; Laws 1988, LB 352, § 74; Laws 1993, LB 121, § 272; Laws 2005, LB 533, § 49.

Cross References

Administrative Procedure Act, see section 84-920.

45-351 Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.

(1) The Department of Banking and Finance shall be charged with the duty of inspecting the business, records, and accounts of all persons who engage in the business of a sales finance company subject to the Nebraska Installment Sales Act. The director shall have the power to appoint examiners who shall, under his or her direction, investigate the installment contracts and business and examine the books and records of licensees when the director shall so determine. Such examinations shall not be conducted more often than annually except as provided in subsection (2) of this section.

(2) The director or his or her duly authorized representative shall have the power to make such investigations as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts, and documents.

(3) The expenses of the director incurred in the examination of the books and records of licensees shall be charged to the licensees as set forth in sections 8-605 and 8-606. The director may charge the costs of an investigation of a nonlicensed person to such person, and such costs shall be paid within thirty days after receipt of billing.

(4) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(5) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Sales Act, any rule or regulation adopted and promulgated under the act, or any order issued by the director under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(6) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (5) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person

in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 18, p. 767; Laws 1994, LB 979, § 13; Laws 1997, LB 137, § 22; Laws 1999, LB 396, § 29; Laws 2004, LB 999, § 36; Laws 2007, LB124, § 37.

Cross References

Administrative Procedure Act, see section 84-920.

45-352 Rules and regulations; adopt.

The director shall have the power to make such general rules and regulations and specific rulings, demands, and findings as may be necessary for the proper conduct of the business licensed under the Nebraska Installment Sales Act, and the enforcement of the act, in addition thereto and not inconsistent therewith.

Source: Laws 1965, c. 268, § 19, p. 767; Laws 2007, LB124, § 38.

45-353 Violations; enforcement; receiver; appointment; powers; duties.

(1) Whenever the director has reasonable cause to believe that any person is violating or is threatening to or intends to violate any of the provisions of the Nebraska Installment Sales Act, he or she may, in addition to all actions provided for in the act and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation. An action may also be brought, on the relation of the Attorney General or the director, to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof.

(2) In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court, in which such action is brought, shall have power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of the Nebraska Installment Sales Act through or by means of the use of such property and business. Such receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up and liquidation of such property and business as shall, from time to time, be conferred upon him or her by the court.

Source: Laws 1965, c. 268, § 20, p. 767; Laws 2007, LB124, § 39.

ARTICLE 7
RESIDENTIAL MORTGAGE LICENSING

Section

RESIDENTIAL MORTGAGE LICENSING

Section

45-701 Act, how cited.

Sections 45-701 to 45-754 shall be known and may be cited as the Residential Mortgage Licensing Act.

Source: Laws 1989, LB 272, § 4; Laws 1995, LB 163, § 1; Laws 2006, LB 876, § 27; Laws 2007, LB124, § 40; Laws 2009, LB328, § 3; Laws 2010, LB892, § 3.
Effective date March 4, 2010.

45-702 Terms, defined.

For purposes of the Residential Mortgage Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a trust deed;

(2) Branch office means any location at which the business of a mortgage banker or mortgage loan originator is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any third-party or home-based locations that mortgage loan originators, agents, and representatives intend to use to transact business with Nebraska residents;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(4) Clerical or support duties means tasks which occur subsequent to the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

(5) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of

voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business;

(6) Department means the Department of Banking and Finance;

(7) Depository institution means any person (a) organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, or industrial banks or similar depository institutions which the Board of Directors of the Federal Deposit Insurance Corporation finds to be operating substantially in the same manner as an industrial bank and (b) engaged in the business of receiving deposits other than funds held in a fiduciary capacity, including, but not limited to, funds held as trustee, executor, administrator, guardian, or agent;

(8) Director means the Director of Banking and Finance;

(9) Dwelling means a residential structure located or intended to be located in this state that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(10) Federal banking agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(11) Immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships;

(12) Installment loan company means any person licensed pursuant to the Nebraska Installment Loan Act;

(13) Licensee means any person licensed under the Residential Mortgage Licensing Act as either a mortgage banker or mortgage loan originator;

(14) Loan processor or underwriter means an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under the Residential Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(15) Mortgage banker or mortgage banking business means any person (a) other than (i) a person exempt under section 45-703, (ii) an individual who is a loan processor or underwriter, or (iii) an individual who is licensed in this state as a mortgage loan originator and (b) who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for a residential mortgage loan;

(16)(a) Mortgage loan originator means an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential

mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include (i) an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 45-727, (ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Nebraska law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and (iii) a person solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(17) Nationwide Mortgage Licensing System and Registry means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies;

(18) Nontraditional mortgage product means any residential mortgage loan product other than a thirty-year fixed rate residential mortgage loan;

(19) Offer means every attempt to provide, offer to provide, or solicitation to provide a residential mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

(20) Person means an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

(21) Real estate brokerage activity means any activity that involves offering or providing real estate brokerage services to the public, including (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property, (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property, (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction, (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate salesperson or real estate broker under any applicable law, and (e) offering to engage in any activity or act in any capacity described in subdivision (a), (b), (c), or (d) of this subdivision;

(22) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(23) Registered mortgage loan originator means any individual who (a) meets the definition of mortgage loan originator and is an employee of (i) a depository institution, (ii) a subsidiary that is (A) wholly owned and controlled by a depository institution and (B) regulated by a federal banking agency, or (iii) an institution regulated by the Farm Credit Administration and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

(24) Registrant means a person registered pursuant to section 45-704;

(25) Residential mortgage loan means any loan or extension of credit, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(26) Residential real estate means any real property located in this state upon which is constructed or intended to be constructed a dwelling;

(27) Reverse-mortgage loan means a loan made by a licensee which (a) is secured by residential real estate, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the residential real estate given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of section 45-702.01;

(28) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a residential mortgage loan;

(29) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands; and

(30) Unique identifier means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Source: Laws 1989, LB 272, § 5; Laws 1993, LB 217, § 1; Laws 1993, LB 121, § 274; Laws 1995, LB 163, § 2; Laws 1995, LB 384, § 17; Laws 1999, LB 396, § 30; Laws 2003, LB 131, § 29; Laws 2003, LB 218, § 1; Laws 2006, LB 876, § 28; Laws 2007, LB124, § 41; Laws 2008, LB851, § 19; Laws 2009, LB328, § 4; Laws 2010, LB892, § 4.
Effective date March 4, 2010.

Cross References

Nebraska Bank Holding Company Act of 1995, see section 8-908.
Nebraska Installment Loan Act, see section 45-1001.

45-702.01 Reverse-mortgage loans; rules applicable; fees authorized; failure by licensee to make loan advances and cure default; forfeiture.

(1) Reverse-mortgage loans shall be governed by the following rules without regard to the requirements set out elsewhere for other types of mortgage transactions: (a) Payment in whole or in part is permitted without penalty at any time during the period of the loan; (b) an advance and interest on the advance have priority over a lien filed after the closing of a reverse-mortgage loan; (c) an interest rate may be fixed or adjustable and may also provide for interest that is contingent on appreciation in the value of the residential real estate; and (d) the advance shall not be reduced in amount or number based on an adjustment in the interest rate when a reverse-mortgage loan provides for periodic advances to a borrower.

(2) Reverse-mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions: (a) Limitations on the purpose and use of future advances or any other mortgage proceeds; (b) limitations on future advances to a term of years or limitations on the term of credit line advances; (c) limitations on the term during which future advances take priority over intervening advances; (d) requirements that a maximum mortgage amount be stated in the mortgage; (e) limitations on loan-to-value ratios; (f) prohibitions on balloon payments; (g) prohibitions on compounded interest and interest on interest; and (h) requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

(3) A licensee may, in connection with a reverse-mortgage loan, charge to the borrower (a) a nonrefundable loan origination fee which does not exceed two percent of the appraised value of the owner-occupied principal residence at the time the loan is made, (b) a reasonable fee paid to third parties originating loans on behalf of the licensee, and (c) such other fees as are necessary and required, including fees for inspections, insurance, appraisals, and surveys.

(4) Licensees failing to make loan advances as required in the loan documents and failing to cure the default as required in the loan documents shall forfeit to the borrower an amount equal to the greater of two hundred dollars or one percent of the amount of the loan advance the licensee failed to make.

Source: Laws 2010, LB892, § 5.
Effective date March 4, 2010.

45-703 Act; exemptions.

(1) Except as provided in section 45-704, the following shall be exempt from the Residential Mortgage Licensing Act:

(a) Any depository institution or wholly owned subsidiary thereof;

(b) Any registered bank holding company;

(c) Any insurance company that is subject to regulation by the Department of Insurance and is either (i) organized or chartered under the laws of Nebraska or (ii) organized or chartered under the laws of any other state if such insurance company has a place of business in Nebraska;

(d) Any person licensed to practice law in this state who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is engaging in real estate brokerage activities unless such person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(f) Any registered mortgage loan originator when acting for an entity described in subdivision (23)(a)(i), (ii), or (iii) of section 45-702;

(g) Any sales finance company licensed pursuant to the Nebraska Installment Sales Act if such sales finance company does not engage in mortgage banking business in any capacity other than as a purchaser or servicer of an installment contract, as defined in section 45-335, which is secured by a mobile home or trailer;

(h) Any trust company chartered pursuant to the Nebraska Trust Company Act;

(i) Any wholly owned subsidiary of an organization listed in subdivisions (b) and (c) of this subsection if the listed organization maintains a place of business in Nebraska;

(j) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(k) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and

(l) Any employee or independent agent of a mortgage banker licensed or registered pursuant to the Residential Mortgage Licensing Act or exempt from the act if such employee or independent agent does not conduct the activities of a mortgage loan originator or loan processor or underwriter.

(2) It shall not be necessary to negate any of the exemptions provided in this section in any complaint, information, indictment, or other writ or proceedings brought under the act, and the burden of establishing the right to any exemption shall be upon the person claiming the benefit of such exemption.

Source: Laws 1989, LB 272, § 6; Laws 1999, LB 396, § 31; Laws 2002, LB 957, § 22; Laws 2005, LB 533, § 50; Laws 2008, LB851, § 20; Laws 2009, LB328, § 5.

Cross References

Nebraska Installment Sales Act, see section 45-334.
Nebraska Trust Company Act, see section 8-201.01.

45-704 Registration required; registration statement; fee; procedure; bond; registrant; duties; renewal.

(1) Notwithstanding any other provision of the Residential Mortgage Licensing Act, no person exempt from licensing under section 45-703 who employs or enters into an independent agent agreement with an individual who is required to obtain a mortgage loan originator license in this state pursuant to section 45-727 shall act as a mortgage banker until such person has registered with the department.

(2) Any person required to register pursuant to subsection (1) of this section shall submit to the department a registration statement on a form prescribed by the department. The form shall contain such information as the department may prescribe as necessary or appropriate, including, but not limited to, (a) all addresses at which business is to be conducted, (b) the names and titles of each director and principal officer of the business, and (c) a description of the activities of the applicant in such detail as the department may require.

(3) The registration statement required in subsection (2) of this section shall be accompanied by a registration fee of two hundred dollars.

(4) The department shall acknowledge the registration by issuing to the registrant a receipt or other form of acknowledgment.

(5) A registrant shall maintain a surety bond as required by section 45-724, submit mortgage reports of condition as required by section 45-726, and comply with the requirements of section 45-735 pertaining to the employment of mortgage loan originators.

(6) A registration under this section shall not be assignable.

(7) After original registration, all registrations shall remain in full force and effect until the next succeeding December 31. Thereafter, a registration under this section may be renewed on an annual basis for a renewal fee of one hundred dollars.

(8)(a) If a registrant fails to maintain a surety bond as required by section 45-724, the department may issue a notice of cancellation of the registration.

(b) If a registrant fails to renew his, her, or its registration as required by this section and does not voluntarily surrender the registration by delivering to the director written notice of the surrender, the department may issue a notice of expiration of the registration.

Source: Laws 1989, LB 272, § 7; Laws 1999, LB 396, § 32; Laws 2003, LB 218, § 2; Laws 2005, LB 533, § 51; Laws 2008, LB851, § 21; Laws 2009, LB328, § 6; Laws 2010, LB892, § 6.
Effective date March 4, 2010.

45-705 License or registration required; application; fees; background investigation; registered agent.

(1) No person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed as a mortgage banker, is registered with the department as provided in section 45-704, is licensed under the Nebraska Installment Loan Act, or is otherwise exempt from the act pursuant to section 45-703.

(2) Applicants for a license as a mortgage banker shall submit to the department an application on a form prescribed by the department. The application shall include, but not be limited to, (a) the applicant's corporate name and no more than one trade name or doing business as designation which the applicant intends to use in this state, if applicable, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, and (g) if the applicant is an individual, his or her social security number.

(3) The application for a license as a mortgage banker shall include or be accompanied by, in a manner as prescribed by the director, (a) the name and street address in this state of a registered agent appointed by the licensee for receipt of service of process and (b) the written consent of the registered agent to the appointment. A post office box number may be provided in addition to the street address.

(4) The application for a license as a mortgage banker shall be accompanied by an application fee of four hundred dollars and, if applicable, a seventy-five-dollar fee for each branch office listed in the application and any processing fee allowed under subsection (2) of section 45-748.

(5) The director may prescribe that the application for a license as a mortgage banker include or be accompanied by, in a manner as prescribed by the director, a background investigation of each applicant by means of fingerprints and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nationwide Mortgage Licensing System and Registry. If the applicant is a partnership, association,

corporation, or other form of business organization, the director may require a criminal history record information check on each member, director, or principal officer of each applicant or any individual acting in the capacity of the manager of an office location. The applicant shall be responsible for the direct costs associated with criminal history record information checks performed. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this section. Except as authorized pursuant to subsection (2) of section 45-748, receipt of criminal history record information by a private person or entity is prohibited.

(6) A license as a mortgage banker granted under the Residential Mortgage Licensing Act shall not be assignable.

(7) An application is deemed filed when accepted as substantially complete by the director.

Source: Laws 1989, LB 272, § 8; Laws 1995, LB 163, § 3; Laws 1997, LB 752, § 118; Laws 2003, LB 218, § 3; Laws 2005, LB 533, § 52; Laws 2007, LB124, § 42; Laws 2008, LB380, § 1; Laws 2009, LB328, § 7; Laws 2010, LB892, § 7.
Effective date March 4, 2010.

Cross References

Nebraska Installment Loan Act, see section 45-1001.

45-706 License; issuance; denial; appeal; renewal; fees.

(1) Upon the filing of an application for a license as a mortgage banker, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Residential Mortgage Licensing Act, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after (a) acceptance of the application; (b) delivery of the bond required under section 45-724; and (c) payment of the required fee.

(2) If the director determines that the mortgage banker license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a mortgage banker license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a mortgage banker license application pursuant to the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act. The director may deny an application for a mortgage banker license application if (a) he or she determines that the applicant does not meet the conditions of subsection (1) of this section or (b) an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking

business, depository institution business, or installment loan company business or (ii) any felony under state or federal law.

(3)(a) All initial licenses shall remain in full force and effect until the next succeeding December 31. Mortgage banker licenses may be renewed annually by submitting to the director a request for renewal and any supplemental material as required by the director. The mortgage banker licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department and the information contained in any supplemental material previously provided to the department remains true and correct.

(b) For the annual renewal of a license to conduct a mortgage banking business under the Residential Mortgage Licensing Act, the fee shall be two hundred dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (2) of section 45-748.

(4) The director may require a mortgage banker licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the licensee warrants such a requirement or that the requirement is in the public interest.

Source: Laws 1989, LB 272, § 9; Laws 1993, LB 121, § 275; Laws 1995, LB 163, § 4; Laws 2003, LB 218, § 4; Laws 2005, LB 533, § 53; Laws 2006, LB 876, § 29; Laws 2007, LB124, § 43; Laws 2008, LB380, § 2; Laws 2009, LB328, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

45-707 Transferred to section 45-742.

45-708 Transferred to section 45-747.

45-709 Transferred to section 45-724.

45-710 Transferred to section 45-741.

45-711 Transferred to section 45-737.

45-712 Transferred to section 45-738.

45-713 Transferred to section 45-739.

45-714 Transferred to section 45-740.

45-715 Transferred to section 45-750.

45-716 Transferred to section 45-751.

45-717 Transferred to section 45-744.

45-717.01 Transferred to section 45-743.

45-717.02 Transferred to section 45-746.

45-718 Transferred to section 45-745.

45-719 Transferred to section 45-752.

45-720 Transferred to section 45-753.

45-721 Transferred to section 45-754.

45-722 Transferred to section 45-725.

45-723 Transferred to section 45-748.

45-724 Surety bond; requirements.

(1) Except as provided in subsection (2) of this section, an applicant for a mortgage banker license or registration shall file with the department a surety bond in the amount of one hundred thousand dollars, furnished by a surety company authorized to do business in the State of Nebraska. The surety bond also shall cover all mortgage loan originators who are employees or independent agents of the applicant. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, the applicant. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries required in this subsection shall satisfy the requirements of this section. The bond or a substitute bond shall remain in effect during all periods of licensing or registration.

(2) Upon filing of the mortgage report of condition required by section 45-726, a mortgage banker licensee or registrant shall maintain or increase its surety bond to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding calendar year in accordance with the following table. A licensee or registrant may decrease its surety bond in accordance with the following table if the surety bond required is less than the amount of the surety bond on file with the department.

Dollar Amount of Closed Residential Mortgage Loans	Surety Bond Required
$0.00 to $5,000,000.00	$100,000.00
$5,000,000.01 to $10,000,000.00	$125,000.00
$10,000,000.01 to $25,000,000.00	$150,000.00
Over $25,000,000.00	$200,000.00

(3) Should the department determine that a mortgage banker licensee or registrant does not maintain a surety bond in the amount required by subsection (2) of this section, the department shall give written notification to the mortgage banker licensee or registrant requiring him, her, or it to increase the surety bond within thirty days to the amount required by subsection (2) of this section.

(4) At any time the director may require the filing of a new or supplemental bond in the form as provided in subsection (1) of this section if he or she determines that the bond filed under subsection (1) or (2) of this section is exhausted or is inadequate for any reason, including the financial condition of

the licensee, the registrant, or the applicant for a license or registration. The new or supplemental bond shall not exceed one million dollars.

Source: Laws 1989, LB 272, § 12; Laws 1993, LB 217, § 2; Laws 2003, LB 218, § 6; Laws 2006, LB 876, § 31; R.S.Supp.,2008, § 45-709; Laws 2009, LB328, § 9; Laws 2010, LB892, § 8.
Effective date March 4, 2010.

45-725 Acquisition of control of mortgage banking business; procedure; fee; disapproval; hearing.

(1) No person acting personally or as an agent shall acquire control of any mortgage banking business required to be licensed under the Residential Mortgage Licensing Act without first giving thirty days' notice to the department on a form prescribed by the department of such proposed acquisition and paying a filing fee of two hundred dollars.

(2) The director, upon receipt of such notice, shall act upon it within thirty days and, unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by the department.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired mortgage banking business;

(ii) The character and general fitness of any acquiring person or of any of the proposed management personnel indicate that the acquired mortgage banking business would not be operated honestly, soundly, or efficiently in the public interest; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the department.

(b) The director shall notify the acquiring party in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring party may request a hearing on the proposed acquisition in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act. At the conclusion of such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Source: Laws 2007, LB124, § 49; Laws 2008, LB851, § 22; R.S.Supp.,2008, § 45-722; Laws 2009, LB328, § 10; Laws 2010, LB892, § 9.
Effective date March 4, 2010.

Cross References

Administrative Procedure Act, see section 84-920.

45-726 Reports.

Each licensed mortgage banker, registrant, and installment loan company shall submit to the Nationwide Mortgage Licensing System and Registry mortgage reports of condition, which shall be in such form and shall contain such information as the department may require.

Source: Laws 2009, LB328, § 11; Laws 2010, LB892, § 10.
Effective date March 4, 2010.

45-727 Mortgage loan originator; license required; loan processor or underwriter; license required.

(1) An individual, unless specifically exempted from the Residential Mortgage Licensing Act under section 45-703, shall not engage in, or offer to engage in, the business of a mortgage loan originator with respect to any residential real estate or dwelling located or intended to be located in this state without first obtaining and maintaining annually a license under the act. Each licensed mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (1) of this section is July 31, 2010.

(3) An independent agent shall not engage in the activities as a loan processor or underwriter unless such independent agent loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent agent loan processor or underwriter licensed as a mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(4) For the purposes of implementing an orderly and efficient licensing process, the director may adopt and promulgate licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

Source: Laws 2009, LB328, § 12.

45-728 License; application; form; fee; use of nationwide registry.

(1) An applicant for a license shall apply on a form prescribed by the director.

(2) The application for a license as a mortgage loan originator shall be accompanied by an application fee of one hundred fifty dollars, plus the cost of the criminal history background check required by subsection (3) of this section and any processing fee allowed under subsection (2) of section 45-748.

(3) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

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

(b) Personal history and experience in a format prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authori-

zation for the Nationwide Mortgage Licensing System and Registry and the director to obtain the following:

(i) An independent credit report obtained from a consumer reporting agency described in 15 U.S.C. 1681a(p), as such section existed on January 1, 2010; and

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(4) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subdivisions (3)(a) and (3)(b)(ii) of this section, the director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any other governmental agency.

(5) For the purposes of this section and in order to reduce the points of contact which the director may have to maintain for purposes of subdivisions (3)(b)(i) and (3)(b)(ii) of this section, the director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

Source: Laws 2009, LB328, § 13; Laws 2010, LB892, § 11.
Effective date March 4, 2010.

45-729 Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal.

(1) The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(b) The applicant has not been convicted of, or pleaded guilty or nolo contendere or its equivalent to, in a domestic, foreign, or military court:

(i) A misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the business of a mortgage banker, depository institution, or installment loan company unless such individual has received a pardon for such conviction; or

(ii) Any felony under state or federal law unless such individual has received a pardon for such conviction;

(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Residential Mortgage Licensing Act. For purposes of this subsection, an individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The director may consider the following factors in making a determination as to financial responsibility:

(i) The applicant's current outstanding judgments except judgments solely as a result of medical expenses;

(ii) The applicant's current outstanding tax liens or other government liens and filings;

(iii) The applicant's foreclosures within the past three years; and

(iv) A pattern of seriously delinquent accounts within the past three years by the applicant;

(d) The applicant has completed the prelicensing education requirements described in section 45-730;

(e) The applicant has passed a written test that meets the test requirement described in section 45-731; and

(f) The applicant is covered by a surety bond as required pursuant to section 45-724 or a supplemental surety bond as required pursuant to section 45-1007.

(2) If the director determines that a mortgage loan originator license application should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a mortgage loan originator license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a mortgage loan originator license application pursuant to the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act.

(3) A mortgage loan originator license shall not be assignable.

Source: Laws 2009, LB328, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

45-730 Prelicensing education requirements; course review and approval; relicensure requirements.

(1) In order to meet the prelicensing education requirements referred to in subdivision (1)(d) of section 45-729, an individual shall complete at least twenty hours of education approved in accordance with subsection (2) of this section, which shall include at least the following:

(a) Three hours of instruction in federal law and regulations regarding mortgage origination;

(b) Three hours of instruction in ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(c) Two hours of instruction related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with

the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

(4) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (1) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

(6) An individual who previously held a mortgage loan originator license applying to be licensed again shall prove that he or she has either (a) completed all of the continuing education requirements for the year in which the license was last held or (b) made up any deficiency in continuing education as provided by subsection (8) of section 45-733.

Source: Laws 2009, LB328, § 15; Laws 2010, LB892, § 12.
Effective date March 4, 2010.

45-731 Written test requirement; subject areas; retaking test; limitations.

(1) In order to meet the written test requirement referred to in subdivision (1)(e) of section 45-729, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(2) A written test shall not be treated as a qualified written test for purposes of subsection (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(a) Ethics;

(b) Federal laws and regulations pertaining to mortgage origination;

(c) State laws and regulations pertaining to mortgage origination; and

(d) Federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4)(a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(b) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(c) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Source: Laws 2009, LB328, § 16.

45-732 License; term; renewal; minimum standards for renewal; fee; denial; appeal.

(1) All initial mortgage loan originator licenses shall remain in full force and effect until the next succeeding December 31. Mortgage loan originator licenses may be renewed annually by submitting to the director a request for renewal and any supplemental material as required by the director. The mortgage loan originator licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department, and the information contained in any supplemental material previously provided to the department, remains true and correct.

(2) The minimum standards for license renewal for mortgage loan originators shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance under subdivisions (1)(a) through (f) of section 45-729;

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in section 45-733; and

(c) The mortgage loan originator has paid all required fees for renewal of the license.

(3) For the annual renewal of a mortgage loan originator license, the fee shall be one hundred twenty-five dollars, plus the cost of the criminal history background check required by the director and any processing fee allowed under subsection (2) of section 45-748.

(4) Except as provided in subsection (4) of section 45-734 and subsection (4) of section 45-742, should the director conclude that a mortgage loan originator does not meet the minimum standards for license renewal, the director shall deny the renewal application. A decision of the director denying a renewal of a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act.

Source: Laws 2009, LB328, § 17.

Cross References

Administrative Procedure Act, see section 84-920.

45-733 Licensed mortgage loan originator; continuing education; continuing education courses; review and approval; credit as instructor; relicensure requirements.

(1) A licensed mortgage loan originator shall complete annually at least eight hours of education approved in accordance with subsection (2) of this section, which shall include at least:

(a) Three hours of instruction in federal laws and regulations regarding mortgage origination;

(b) Two hours of instruction in ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(c) Two hours of instruction related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator, an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) A licensed mortgage loan originator:

(a) Shall only receive credit for a continuing education course in the year in which the course is taken except as provided in subsection (8) of this section; and

(b) Shall not take the same approved course in the same or consecutive years to meet the annual requirements for continuing education.

(6) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(7) An individual having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1)(a), (b), and (c) of this section for any state shall be accepted as credit towards completion of continuing education requirements in this state.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new license or renewal license. Such individual may make up any deficiency in continuing education as established by rule, regulation, or order of the director if such individual meets the requirements of subdivision (2)(a) of section 45-732 and has paid the new application fee as provided by subsection (2) of section 45-728 or the reinstatement fee as provided by subdivision (4)(b) of section 45-742.

Source: Laws 2009, LB328, § 18; Laws 2010, LB892, § 13.
Effective date March 4, 2010.

45-734 Mortgage loan originator license; inactive status; duration; renewal; reactivation.

(1) A mortgage loan originator whose license is placed on inactive status under this section shall not act as a mortgage loan originator in this state until such time as the license is reactivated.

(2) The department shall place a mortgage loan originator license on inactive status upon the occurrence of one of the following:

(a) Upon receipt of a notice from either the licensed mortgage banker, registrant, installment loan company, or mortgage loan originator that the mortgage loan originator's relationship as an employee or independent agent of a licensed mortgage banker or installment loan company has been terminated;

(b) Upon the cancellation of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the cancellation of the employing installment loan company's license pursuant to subdivision (3)(b) of section 45-1033 for failure to maintain the required surety bond;

(c) Upon the voluntary surrender of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the voluntary surrender of the employing installment loan company's license pursuant to section 45-1032;

(d) Upon the expiration of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the expiration of the employing installment loan company's license pursuant to subdivision (3)(a) of section 45-1033 if such mortgage loan originator has renewed his or her license pursuant to section 45-732;

(e) Upon the revocation or suspension of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the revocation or suspension of the employing installment loan company's license pursuant to subsection (1) of section 45-1033; or

(f) Upon the cancellation, surrender, or expiration of the employing registrant's registration with the department.

(3) If a mortgage loan originator license becomes inactive under this section, the license shall remain inactive until the license expires, the licenseholder surrenders the license, the license is revoked or suspended pursuant to section 45-742, or the license is reactivated.

(4) A mortgage loan originator who holds an inactive mortgage loan originator license may renew such inactive license if he or she remains otherwise eligible for renewal pursuant to section 45-732 except for being covered by a surety bond pursuant to subdivision (1)(f) of section 45-729. Such renewal shall not reactivate the license.

(5) The department shall reactivate a mortgage loan originator license upon receipt of a notice pursuant to section 45-735 that the mortgage loan originator licensee has been hired as a mortgage loan originator by a licensed mortgage banker, registrant, or installment loan company and if such mortgage loan originator is covered by a surety bond pursuant to subdivision (1)(f) of section 45-729.

Source: Laws 2009, LB328, § 19.

45-735 Mortgage loan originator; employee or independent agent; restriction on activities; written agency contract; notification to department; fee; notice of termination.

(1) A mortgage loan originator shall be an employee or independent agent of a single licensed mortgage banker, registrant, or installment loan company that shall directly supervise, control, and maintain responsibility for the acts and omissions of the mortgage loan originator.

(2) A mortgage loan originator shall not engage in mortgage loan origination activities at any location that is not a main office location of a licensed mortgage banker, registrant, or installment loan company or a branch office of a licensed mortgage banker or registrant. The licensed mortgage banker, registrant, or installment loan company shall designate the location or locations at which each mortgage loan originator is originating residential mortgage loans.

(3) Any licensed mortgage banker, registrant, or installment loan company who engages an independent agent as a mortgage loan originator shall maintain a written agency contract with such mortgage loan originator. Such written agency contract shall provide that the mortgage loan originator is originating loans exclusively for the licensed mortgage banker, registrant, or installment loan company.

(4) A licensed mortgage banker, registrant, or installment loan company that has hired a licensed mortgage loan originator as an employee or entered into an independent agent agreement with such licensed mortgage loan originator shall provide notification to the department as soon as reasonably possible after entering into such relationship, along with a fee of fifty dollars. The employing entity shall not allow the mortgage loan originator to conduct such activity in this state prior to such notification to the department and confirmation that the department has received notice of the termination of the mortgage loan originator's prior employment.

(5) A licensed mortgage banker, registrant, or installment loan company shall notify the department no later than ten days after the termination, whether voluntary or involuntary, of a mortgage loan originator unless the mortgage loan originator has previously notified the department of the termination.

Source: Laws 2009, LB328, § 20.

45-736 Unique identifier; use.

The unique identifier of any individual originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director.

Source: Laws 2009, LB328, § 21.

45-737 Licensee; duties.

A licensee shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Residential Mortgage Licensing Act;

(6) Answer in writing, within ten business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01;

(8) Maintain a copy of all documents and records relating to each residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good

faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn;

(9) Notify the director in writing within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by the licensee or notice of a filing of an involuntary petition in bankruptcy against the licensee;

(b) The licensee has lost the ability to fund a loan or loans after it had made a loan commitment or commitments and approved a loan application or applications;

(c) Any other state or jurisdiction has invoked suspension or revocation procedures against the licensee;

(d) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents; or

(e) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law; and

(10) Notify the director in writing or through an electronic method as prescribed by the director within thirty days after the occurrence of a material development other than as described in subdivision (9) of this section, including, but not limited to, any of the following:

(a) Business reorganization;

(b) A change of name, trade name, doing business as designation, or main office address;

(c) The establishment of a branch office. Notice of such establishment shall be on a form prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office; or

(d) The closing of a branch office.

Source: Laws 1989, LB 272, § 14; Laws 1994, LB 1275, § 4; Laws 1995, LB 163, § 6; Laws 1995, LB 396, § 1; Laws 1996, LB 1053, § 11; Laws 2003, LB 218, § 8; Laws 2005, LB 533, § 55; Laws 2007, LB124, § 46; R.S.Supp.,2008, § 45-711; Laws 2009, LB328, § 22; Laws 2010, LB892, § 14.
Effective date March 4, 2010.

45-738 Licensee; failure to deliver abstract of title.

If a licensee in connection with a residential mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty business days of the borrower's request made by certified mail, return receipt requested, in connection with a proposed sale of the real property, the borrower may authorize the preparation of a new abstract of title to the real property and the person failing to deliver the original abstract shall pay the borrower the reasonable costs of the preparation of the new abstract of title. If

a borrower brings an action against the person failing to deliver an abstract of title to recover the payment made, the borrower shall also be entitled to recover reasonable attorney's fees and court costs incurred in the action.

Source: Laws 1989, LB 272, § 15; R.S.1943, (2004), § 45-712; Laws 2009, LB328, § 23.

45-739 Transfer of servicing rights; duties.

Not less than fifteen days prior to the effective date of the transfer of servicing rights involving any residential mortgage loan, the licensee transferring the servicing rights shall send a written notice of transfer to each borrower which shall include:

(1) The effective date of the transfer;

(2) The name, address, and telephone number of the transferee and the name of a referral person or department of the transferee;

(3) Instructions concerning payments made before the effective date of the transfer; and

(4) Instructions concerning payments made after the effective date of the transfer.

The provisions of this section shall not apply when the licensee transferring the servicing rights has provided the borrower with a written notice of transfer at the time of closing on the residential mortgage loan.

Source: Laws 1989, LB 272, § 16; Laws 1996, LB 1053, § 12; R.S.1943, (2004), § 45-713; Laws 2009, LB328, § 24.

45-740 Prohibited acts; violation; penalty; civil liability.

(1) A licensee, an officer, an employee, or an agent of the licensee shall not:

(a) Assess a late charge if all payments due are received before the date upon which late charges are authorized in the underlying mortgage or trust deed or other loan documents;

(b) Delay closing of a residential mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(c) Misrepresent or conceal material facts or make false promises intended to influence, persuade, or induce an applicant for a residential mortgage loan or a borrower to take a residential mortgage loan or cause or contribute to such a misrepresentation by any person acting on a licensee's or any other lender's behalf;

(d) Misrepresent to, or conceal from, an applicant for a residential mortgage loan or a borrower material facts, terms, or conditions of a residential mortgage loan to which the licensee is a party;

(e) Fail to make disclosures as required by the Residential Mortgage Licensing Act and any other applicable state or federal law including regulations thereunder;

(f) Engage in any transaction, practice, or business conduct that is not in good faith or that operates a fraud upon any person in connection with the making of any residential mortgage loan;

(g) Receive compensation for acting as a mortgage banker or mortgage loan originator if the licensee has otherwise acted as a real estate broker or agent in

connection with the sale of the real estate which secures the residential mortgage loan unless the licensee has provided written disclosure to the person from whom compensation is collected that the licensee is receiving compensation both for acting as a mortgage banker or mortgage loan originator and for acting as a real estate broker or agent;

(h) Advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcasted, or televised, in any manner, including by the Internet, any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for a residential mortgage loan or any false, misleading, or deceptive statement regarding the qualifications of the licensee or of any officer, employee, or agent thereof;

(i) Record a lien on real property if money is not available for the immediate disbursal to the borrower unless, before that recording, the licensee (i) informs the borrower in writing of the reason for the delay and of a definite date by which disbursement shall be made and (ii) obtains the borrower's written permission for the delay unless the delay is required by any other state or federal law;

(j) Fail to account for or deliver to any person personal property obtained in connection with the mortgage banking business, including, but not limited to, money, funds, deposits, checks, drafts, mortgages, trust deeds, or other documents or things of value which the licensee was not entitled to retain;

(k) Fail to disburse, without just cause, any funds in accordance with any agreement connected with the mortgage banking business;

(l) Collect fees and charges on funds other than new funds if the licensee makes a residential mortgage loan to refinance an existing residential mortgage loan to a current borrower of the licensee within twelve months after the previous residential mortgage loan made by the licensee;

(m) Assess any fees against the borrower other than those which are reasonable and necessary, including actual charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including, but not limited to, (i) prepayment charges, (ii) delinquency charges, (iii) premiums for hazard, private mortgage, disability, life, or title insurance, (iv) fees for escrow services, appraisal services, abstracting services, title services, surveys, inspections, credit reports, notary services, and recording of documents, (v) origination fees, (vi) interest on interest after default, and (vii) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds;

(n) Allow the borrower to finance, directly or indirectly, (i) any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance or debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a residential mortgage loan or (ii) any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. For purposes of this section, any premiums or charges calculated and paid on a periodic basis that are not added to the principal of the loan shall not be considered financed directly or indirectly by the creditor;

(o) Falsify any documentation relating to a residential mortgage loan or a residential mortgage loan application;

(p) Recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a residential mortgage loan that refinances all or any portion of such existing loan or debt;

(q) Borrow money from, personally loan money to, or guarantee any loan made to any customer or applicant for a residential mortgage loan;

(r) Obtain a signature on a document required to be notarized in connection with a residential mortgage loan or a residential mortgage loan application unless the qualified notary public performing the notarization is physically present at the time the signature is obtained; or

(s) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(2) Any person who violates any provision of subsection (1) of this section is guilty of a Class III misdemeanor.

(3) Any person who violates any provision of subsection (1) of this section is liable to the applicant for a residential mortgage loan or to the borrower for the fees, costs, and charges incurred in connection with obtaining or attempting to obtain the residential mortgage loan, damages resulting from such violation, interest on the damage from the date of the violation, and court costs, including reasonable attorney's fees.

Source: Laws 1989, LB 272, § 17; Laws 2003, LB 218, § 9; Laws 2006, LB 876, § 32; Laws 2007, LB124, § 47; R.S.Supp.,2008, § 45-714; Laws 2009, LB328, § 25.

45-741 Director; examine documents and records; investigate violations or complaints; director; powers; costs; confidentiality.

(1) The director may examine documents and records maintained by a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act. The director may investigate complaints about a licensee, registrant, individual, or person subject to the act. The director may investigate reports of alleged violations of the act, any federal law governing residential mortgage loans, or any rule, regulation, or order of the director under the act. For purposes of investigating violations or complaints arising under the act or for the purposes of examination, the director may review, investigate, or examine any licensee, registrant, individual, or person subject to the act as often as necessary in order to carry out the purposes of the act.

(2) For purposes of any investigation, examination, or proceeding, including, but not limited to, initial licensing, license renewal, license suspension, license conditioning, or license revocation, the director shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(a) Criminal, civil, and administrative history information;

(b) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in 15 U.S.C. 1681a(p), as such section existed on January 1, 2010; and

(c) Any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(3) Each licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act shall make available to the director upon request the books, accounts, records, files, or documents relating to the operations of such licensee, registrant, individual, or person subject to the act. The director shall have access to such books, accounts, records, files, and documents and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, registrant, individual, or person subject to the act, concerning the business of the licensee, registrant, individual, or person subject to the act.

(4) Each licensee, registrant, individual, or person subject to the act shall make or compile reports or prepare other information as instructed by the director in order to carry out the purposes of this section, including, but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions on a form prescribed by the director; or

(c) Such other information deemed necessary to carry out the purposes of this section.

(5) The director may send a notice of investigation or inquiry request for information to a licensee or registrant. Upon receipt by a licensee or registrant of the director's notice of investigation or inquiry request for information, the licensee or registrant shall respond within twenty-one calendar days. Each day beyond that time a licensee or registrant fails to respond as required by this subsection shall constitute a separate violation of the act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee, a registrant, or any person.

(6) For the purpose of any investigation, examination, or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

(7) In conducting an examination or investigation under this section, the director may rely on reports made by the licensee or registrant which have been prepared within the preceding twelve months for the following federal agencies or federally related entities:

(a) The United States Department of Housing and Urban Development;

(b) The Federal Housing Administration;

(c) The Federal National Mortgage Association;

(d) The Government National Mortgage Association;

(e) The Federal Home Loan Mortgage Corporation; or

(f) The United States Department of Veterans Affairs.

(8) In order to carry out the purposes of this section, the director may:

(a) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce the regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(b) Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, registrant, individual, or person subject to the act;

(c) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(d) Accept audit reports made by an independent certified public accountant for the licensee, registrant, individual, or person subject to the act in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

(9) If the director receives a complaint or other information concerning noncompliance with the act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(10) No licensee, registrant, individual, or person subject to investigation or examination under this section shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(11) The total charge for an examination or investigation shall be paid by the licensee or registrant as set forth in sections 8-605 and 8-606.

(12) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(13) Complaint files shall be deemed public records.

(14) The authority of this section shall remain in effect, whether such a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

Source: Laws 1989, LB 272, § 13; Laws 1993, LB 217, § 3; Laws 1995, LB 163, § 5; Laws 2003, LB 218, § 7; Laws 2007, LB124, § 45; R.S.Supp.,2008, § 45-710; Laws 2009, LB328, § 26; Laws 2010, LB892, § 15.
Effective date March 4, 2010.

45-742 License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, suspend or revoke any license issued under the Residential Mortgage Licensing Act. The director may also impose an administrative fine for each separate violation of the act if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the act, rules and regulations adopted and promulgated under the act, any order, including a cease and desist order, issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741 after written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(f) The licensee has failed to maintain records as required by subdivision (8) of section 45-737 or as otherwise required following written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual (i) has had a mortgage loan originator license revoked in any state, unless such revocation was subsequently vacated, (ii) has a mortgage loan originator license which has been suspended by the director, or (iii) while previously associated in any other capacity with another licensee, was the subject of a complaint under the act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

(i) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license;

(j) The licensee has violated the written restrictions or conditions under which the license was issued;

(k) The licensee, or if the licensee is a business entity, one of the officers, directors, shareholders, partners, and members, was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(l) The licensee has had a similar license revoked in any other jurisdiction; or

(m) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the act or with any state or federal law applicable to the mortgage banking business.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-743 for acts committed before the surrender. The director's approval of such license surrender shall not be required unless the director has commenced an examination or investigation pursuant to section 45-741 or has commenced a proceeding to revoke or suspend the licensee's license or impose an administrative fine pursuant to this section.

(4)(a) If a licensee fails to (i) renew its license as required by section 45-706 and does not voluntarily surrender the license pursuant to this section or (ii) pay the required fee for renewal of the license, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) The director may adopt by rule, regulation, or order procedures for the reinstatement of licenses for which a notice of expiration was issued in accordance with subdivision (a) of this subsection. Such procedures shall be consistent with standards established by the Nationwide Mortgage Licensing System and Registry. The fee for reinstatement shall be the same fee as the fee for the initial license application.

(c) If a licensee fails to maintain a surety bond as required by section 45-724, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, part-

ners, or members pursuant to section 45-743 for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 1989, LB 272, § 10; Laws 1997, LB 137, § 23; Laws 1999, LB 396, § 33; Laws 2003, LB 218, § 5; Laws 2005, LB 533, § 54; Laws 2006, LB 876, § 30; R.S.Supp.,2008, § 45-707; Laws 2009, LB328, § 27; Laws 2010, LB892, § 16.
Effective date March 4, 2010.

Cross References

Administrative Procedure Act, see section 84-920.

45-743 Violations; administrative fine; costs; lien.

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, impose an administrative fine against any officer, director, shareholder, partner, or member of a licensee, if the director finds the licensee or any such person participated in or had knowledge of any act prohibited by sections 45-737, 45-740, and 45-742 or otherwise violated the Residential Mortgage Licensing Act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to section 45-742.

(2) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, that any person has knowingly committed any act prohibited by section 45-742 or otherwise violated the Residential Mortgage Licensing Act, the director may order such person to pay (a) an administrative fine of not more than five thousand dollars for each separate violation and (b) the costs of investigation.

(3) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

Source: Laws 1995, LB 163, § 9; Laws 2003, LB 218, § 12; Laws 2006, LB 876, § 34; R.S.Supp.,2008, § 45-717.01; Laws 2009, LB328, § 28.

Cross References

Administrative Procedure Act, see section 84-920.

45-744 Cease and desist orders; department; powers; judicial review; violation; penalty.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated any provision of the Residential Mortgage Licensing Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen

business days after the date of the order, of written request from the affected person a hearing will be scheduled within thirty business days after the date of receipt of the written request unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act. The director may obtain an order from the district court of Lancaster County for the enforcement of the cease and desist order.

(4) A person who violates a cease and desist order of the director may, after notice and hearing and upon further order of the director, be subject to a penalty of not more than five thousand dollars for each act in violation of the cease and desist order.

Source: Laws 1989, LB 272, § 20; Laws 1995, LB 163, § 8; Laws 2000, LB 932, § 33; Laws 2001, LB 53, § 102; Laws 2006, LB 876, § 33; R.S.Supp.,2008, § 45-717; Laws 2009, LB328, § 29.

Cross References

Administrative Procedure Act, see section 84-920.

45-745 Appeals.

In addition to any other remedy a licensee may have, any licensee or any person considering himself or herself aggrieved by any action of the department under the Residential Mortgage Licensing Act may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 1989, LB 272, § 21; R.S.1943, (2004), § 45-718; Laws 2009, LB328, § 30.

Cross References

Administrative Procedure Act, see section 84-920.

45-746 Enforcement of act; director; powers; construction of act; failure to comply with act; effect.

(1) The director may request the Attorney General to enforce the Residential Mortgage Licensing Act. A civil enforcement action by the Attorney General may be filed in the district court of Lancaster County. A civil enforcement action by the Attorney General may seek temporary and permanent injunctive relief, restitution for a borrower aggrieved by a violation of the act, and costs for the investigation and prosecution of the enforcement action.

(2) Except when expressly authorized, there shall be no private cause of action for any violation of the act.

(3) Nothing in the act shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the mortgage

banking business or the right of the state to punish any person for any violation of law.

(4) Failure to comply with the act shall not affect the validity or enforceability of any residential mortgage loan. A person acquiring a residential mortgage loan or an interest in a residential mortgage loan is not required to ascertain the extent of compliance with the act.

Source: Laws 2006, LB 876, § 35; R.S.Supp.,2008, § 45-717.02; Laws 2009, LB328, § 31.

45-747 Prohibited acts; penalty.

(1) Any person required to be licensed or registered under the Residential Mortgage Licensing Act who, without first obtaining a license or registration under the act or while such license is on inactive status or expired or has been suspended, revoked, or canceled by the director, engages in the business of or occupation of, advertises or holds himself or herself out as, claims to be, or temporarily acts as a mortgage banker or mortgage loan originator in this state is guilty of a Class II misdemeanor.

(2) Any individual who has been convicted of, pleaded guilty to, or been found guilty after a plea of nolo contendere to (a) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (b) any felony under state or federal law, and is employed by or maintains a contractual relationship as an agent of, any person required to be licensed or registered under the act, is guilty of a Class I misdemeanor.

Source: Laws 1989, LB 272, § 11; Laws 1999, LB 396, § 34; Laws 2007, LB124, § 44; R.S.Supp.,2008, § 45-708; Laws 2009, LB328, § 32.

45-748 License and registration under Nationwide Mortgage Licensing System and Registry; department; powers and duties; director; duties.

(1) The department shall require mortgage bankers, registrants, and mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements, as necessary. The requirements may include, but not be limited to:

(a) Background checks of mortgage bankers, registrants, and mortgage loan originators, including, but not limited to:

(i) Criminal history through fingerprint or other data bases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with the prelicensure education and testing and continuing education requirements as provided in the Residential Mortgage Licensing Act;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report violations of the act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 45-749.

(4) The director shall establish a process whereby mortgage bankers, registrants, and mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Source: Laws 2007, LB124, § 50; R.S.Supp.,2008, § 45-723; Laws 2009, LB328, § 33; Laws 2010, LB892, § 17.
Effective date March 4, 2010.

45-749 Information sharing; privilege and confidentiality; limitations; applicability of section; director; powers.

(1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(b) Information or material that is subject to a privilege or confidentiality under subdivision (1)(a) of this section shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (1)(a) of this section that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or by order of the director.

Source: Laws 2009, LB328, § 34; Laws 2010, LB892, § 18.
Effective date March 4, 2010.

45-750 Department; duties; rules and regulations.

(1) The department shall be responsible for the administration and enforcement of the Residential Mortgage Licensing Act.

(2) The department may adopt and promulgate such rules and regulations as it may deem necessary in the administration of the act and not inconsistent with the act. The department shall make a good faith effort to provide a copy of the notice of hearing as required by section 84-907 in a timely manner to all licensees. Such notice may be sent electronically to licensees.

Source: Laws 1989, LB 272, § 18; Laws 2003, LB 218, § 10; Laws 2007, LB124, § 48; R.S.Supp.,2008, § 45-715; Laws 2009, LB328, § 35.

45-751 Money collected; disposition.

(1) All fees, charges, and costs collected by the department pursuant to the Residential Mortgage Licensing Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

(2) The department shall remit fines collected under the Residential Mortgage Licensing Act to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1989, LB 272, § 19; Laws 1994, LB 1066, § 32; Laws 1995, LB 163, § 7; Laws 1995, LB 599, § 14; Laws 2003, LB 218, § 11; Laws 2007, LB124, § 51; R.S.Supp.,2008, § 45-716; Laws 2009, LB328, § 36.

45-752 Act; liberal construction.

The Residential Mortgage Licensing Act shall be construed liberally so as to effectuate its purposes.

Source: Laws 1989, LB 272, § 22; R.S.1943, (2004), § 45-719; Laws 2009, LB328, § 37.

45-753 Personal jurisdiction; when.

Application for a license as a mortgage banker, for registration as a mortgage banker, or for a license as a mortgage loan originator pursuant to the Residential Mortgage Licensing Act shall constitute sufficient contact with this state for the exercise of personal jurisdiction in any action arising under the act.

Source: Laws 1989, LB 272, § 23; R.S.1943, (2004), § 45-720; Laws 2009, LB328, § 38.

45-754 Loans subject to act.

Any residential mortgage loan made with respect to real property located in this state shall be subject to the Residential Mortgage Licensing Act and all other applicable laws of this state, notwithstanding the place of execution, either nominal or real, of such residential mortgage loan.

Source: Laws 1989, LB 272, § 24; R.S.1943, (2004), § 45-721; Laws 2009, LB328, § 39.

ARTICLE 9

DELAYED DEPOSIT SERVICES LICENSING ACT

Section

45-901 Act, how cited.

Sections 45-901 to 45-929 shall be known and may be cited as the Delayed Deposit Services Licensing Act.

Source: Laws 1994, LB 967, § 1; Laws 2006, LB 876, § 36.

45-906 Application; fee; bond.

The application required by section 45-905 shall be accompanied by:

(1) A nonrefundable application fee of five hundred dollars; and

(2) A surety bond in the sum of fifty thousand dollars to be executed by the licensee and a surety company authorized to do business in Nebraska and approved by the director conditioned for the faithful performance by the licensee of the duties and obligations pertaining to the delayed deposit services business so licensed and the prompt payment of any judgment recovered against the licensee. The bond or a substitute bond shall remain in effect during all periods of licensing or the licensee shall immediately cease doing business and its license shall be surrendered to or canceled by the department. A surety may cancel a bond only upon thirty days' written notice to the director.

The director may at any time require the filing of a new or supplemental bond in the form as provided in subdivision (2) of this section if he or she determines that the bond filed under this section is exhausted or is inadequate for any reason, including, but not limited to, the financial condition of the licensee or the applicant for a license, or violations of the Delayed Deposit Services Licensing Act, any rule, regulation, or order thereunder, or any state or federal law applicable to the licensee or applicant for a license. The new or supplemental bond shall not exceed one hundred thousand dollars.

Source: Laws 1994, LB 967, § 6; Laws 2001, LB 53, § 104; Laws 2006, LB 876, § 37.

45-907 Application; notice of filing; publication; hearing; investigation; costs.

(1) When an application for a delayed deposit services business license has been accepted by the director as substantially complete, notice of the filing of the application shall be published by the director for three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the delayed deposit services business. A public hearing shall be held on each application except as provided in subsection (2) of this section. The date for hearing shall not be less than thirty days after the last publication. Written protest against the issuance of the license may be filed with the Department of Banking and Finance by any person not less than five days before the date set for hearing. The director, in his or her discretion, may grant a continuance. The costs of the hearing shall be paid by the applicant. The director may investigate the propriety of the issuance of a license to the applicant. The costs of such investigation shall be paid by the applicant.

(2) The director may waive the hearing requirements of subsection (1) of this section if (a) the applicant has held and operated under a license to engage in the delayed deposit services business in Nebraska pursuant to the Delayed Deposit Services Licensing Act for at least three calendar years immediately prior to the filing of the application, (b) no written protest against the issuance of the license has been filed with the department within fifteen days after publication of a notice of the filing of the application one time in a newspaper of general circulation in the county where the applicant proposes to operate the delayed deposit services business, and (c) in the judgment of the director, the experience, character, and general fitness of the applicant warrant the belief that the applicant will comply with the act.

(3) The expense of any publication made pursuant to this section shall be paid by the applicant.

Source: Laws 1994, LB 967, § 7; Laws 2006, LB 876, § 38; Laws 2008, LB851, § 23.

45-910 License; posting; renewal; fee.

(1) A license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee's place of business.

(2) All licenses shall remain in effect until the next succeeding May 1, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911.

(3) Licenses may be renewed annually by filing with the director (a) a renewal fee consisting of one hundred fifty dollars for the main office location and one hundred dollars for each branch office location and (b) an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

Source: Laws 1994, LB 967, § 10; Laws 2001, LB 53, § 105; Laws 2005, LB 533, § 56.

45-911 Surrender of license; effect.

A licensee may surrender a delayed deposit services business license by delivering to the director written notice that the license is surrendered. The Department of Banking and Finance may issue a notice of cancellation of the license following such surrender in lieu of revocation proceedings. The surrender shall not affect the licensee's civil or criminal liability for acts committed prior to such surrender, affect the liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members for acts committed before the surrender, affect the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee or fees. The director may establish procedures for the disposition of the books, accounts, and records of the licensee and may require such action as he or she deems necessary for the protection of the makers of checks which are outstanding at the time of surrender of the license.

Source: Laws 1994, LB 967, § 11; Laws 2006, LB 876, § 39.

45-912 Licensee; duty to inform director; when.

A licensee shall be required to notify the director in writing within thirty days after the occurrence of any material development, including, but not limited to:

(1) Bankruptcy or corporate reorganization;

(2) Business reorganization;

(3) Institution of license revocation procedures by any other state or jurisdiction;

(4) The filing of a criminal indictment or complaint against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;

(5) A felony conviction against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents; or

(6) The termination of employment or association with the licensee of any of the licensee's officers, directors, shareholders, partners, members, employees, or agents for violations or suspected violations of the Delayed Deposit Services Licensing Act, any rule, regulation, or order thereunder, or any state or federal law applicable to the licensee.

Source: Laws 1994, LB 967, § 12; Laws 2006, LB 876, § 40.

45-915 Licensee; principal place of business; change of location; branch offices; approval required; fee.

(1) Except as provided in subsection (2) of this section, a licensee may offer a delayed deposit services business only at an office designated as its principal place of business in the application. A licensee may change the location of its designated principal place of business with the prior written approval of the director. The director may establish forms and procedures for determining whether the change of location should be approved.

(2) A licensee may operate branch offices only in the same county in which the licensee's designated principal place of business is located. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the director. The director may establish forms and procedures for determining whether an original branch or branches or a change of location of a branch should be approved.

(3) A fee of one hundred fifty dollars shall be paid to the director for each request made pursuant to subsection (1) or (2) of this section.

Source: Laws 1994, LB 967, § 15; Laws 2006, LB 876, § 41.

45-915.01 Licensee; books and records.

(1) Each licensee shall keep or make available the books and records relating to transactions made under the Delayed Deposit Services Licensing Act as are necessary to enable the department to determine whether the licensee is complying with the act. The books and records shall be maintained in a manner consistent with accepted accounting practices.

(2) A licensee shall, at a minimum, include in its books and records copies of all application materials relating to makers, disclosure agreements, checks, payment receipts, and proofs of compliance required by section 45-919.

(3) A licensee shall preserve or keep its books and records relating to every delayed deposit transaction for three years from the date of the inception of the transaction, or two years from the date a final entry is made thereon, including any applicable collection effort, whichever is later.

(4) The licensee shall maintain its books, accounts, and records, whether in physical or electronic form, at its designated principal place of business, except that books, accounts, and records which are older than two years may be maintained at any other place within this state as long as such records are available for inspection by the Department of Banking and Finance.

Source: Laws 2006, LB 876, § 47.

45-916 Operating with other business; conditions.

A licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business if:

(1) The books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business;

(2) The other business is not of a type which would tend to conceal evasion of the Delayed Deposit Services Licensing Act. If the director determines upon investigation that the other business is of a type which would conceal evasion of the act, the director shall order such licensee to cease the operation of the other business at such location; and

(3) At least thirty days prior to conducting such other business, the licensee provides written notice to the director of (a) its intent to conduct such other business at its location or locations and (b) the nature of such other business and the director does not disapprove of such other business within thirty days after receiving the written notice.

Source: Laws 1994, LB 967, § 16; Laws 2006, LB 876, § 42.

45-917 Licensee; written notice; contents; fees, charges, and penalties; posting required.

(1) Every licensee shall, at the time any delayed deposit services transaction is made, give to the maker of the check, or if there are two or more makers, to one of them, a notice written in plain English disclosing:

(a) The fee to be charged for the transaction;

(b) The date on which the check will be deposited or presented for negotiation; and

(c) Any penalty not to exceed fifteen dollars which the licensee will charge if the check is not negotiable on the date agreed upon. If the licensee required the maker to give two checks for one delayed deposit transaction, the licensee shall charge only one penalty in the event both checks are not negotiable on the date agreed upon.

(2) In addition to the notice required by subsection (1) of this section, every licensee shall conspicuously display a schedule of all fees, charges, and penalties for all services provided by the licensee. Such notice shall be posted at every office of the licensee.

Source: Laws 1994, LB 967, § 17; Laws 2006, LB 876, § 43.

45-919 Acts prohibited.

(1) No licensee shall:

(a) At any one time hold from any one maker more than two checks;

(b) At any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars;

(c) Hold or agree to hold a check for more than thirty-four days. A check which is in the process of collection for the reason that it was not negotiable on the day agreed upon shall not be deemed as being held in excess of the thirty-four-day period;

(d) Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee or other person;

(e) Accept a check as repayment, refinancing, or any other consolidation of a check or checks held by the same licensee;

(f) Renew, roll over, defer, or in any way extend a delayed deposit transaction by allowing the maker to pay less than the total amount of the check and any authorized fees or charges. This subdivision shall not prevent a licensee that agreed to hold a check for less than thirty-four days from agreeing to hold the check for an additional period of time no greater than the thirty-four days it would have originally been able to hold the check if (i) the extension is at the request of the maker, (ii) no additional fees are charged for the extension, and (iii) the delayed deposit transaction is completed as required by subdivision (1)(c) of this section. The licensee shall retain written or electronic proof of compliance with this subdivision. If a licensee fails, or is unable, to provide such proof to the department upon request, there shall be a rebuttable presumption that a violation of this subdivision has occurred and the department may pursue any remedies or actions available to it under the Delayed Deposit Services Licensing Act; or

(g) Enter into another delayed deposit transaction with the same maker on the same business day as the completion of a delayed deposit transaction unless prior to entering into the transaction the maker and the licensee verify on a form prescribed by the department that completion of the prior delayed deposit transaction has occurred. The licensee shall retain written proof of compliance with this subdivision. If a licensee fails, or is unable, to provide such proof to the department upon request, there shall be a rebuttable presumption that a violation of this subdivision has occurred and the department may pursue any remedies or actions available to it under the act.

(2) For purposes of this section, (a) completion of a delayed deposit transaction means the licensee has presented a maker's check for payment to a financial institution as defined in section 8-101 or the maker redeemed the check by paying the full amount of the check in cash to the licensee and (b) licensee shall include (i) a person related to the licensee by common ownership or control, (ii) a person in whom such licensee has any financial interest of ten percent or more, or (iii) any employee or agent of the licensee.

Source: Laws 1994, LB 967, § 19; Laws 2000, LB 932, § 34; Laws 2006, LB 876, § 44.

45-920 Director; examination of licensee; costs.

The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 45-921. The costs of the director incurred in an examination shall be paid by the licensee as set forth in sections 8-605 and 8-606.

Source: Laws 1994, LB 967, § 20; Laws 2007, LB124, § 52.

45-922 Licensee; disciplinary actions; failure to renew.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Delayed Deposit Services Licensing Act if he or she finds:

(a) A licensee or any of its officers, directors, partners, or members has knowingly violated the act or any rule, regulation, or order of the director thereunder;

(b) A fact or condition existing which, if it had existed at the time of the original application for such license, would have warranted the director to refuse to issue such license;

(c) A licensee has abandoned its place of business for a period of thirty days or more;

(d) A licensee or any of its officers, directors, partners, or members has knowingly subscribed to, made, or caused to be made any false statement or false entry in the books and records of any licensee, has knowingly subscribed to or exhibited false papers with the intent to deceive the Department of Banking and Finance, has failed to make a true and correct entry in the books and records of such licensee of its business and transactions in the manner and form prescribed by the department, or has mutilated, altered, destroyed, secreted, or removed any of the books or records of such licensee without the written approval of the department or as provided in section 45-925; or

(e) A licensee has knowingly violated a voluntary consent or compliance agreement which had been entered into with the director.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3)(a) If a licensee fails to renew its license as required by section 45-910 and does not voluntarily surrender the license pursuant to section 45-911, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-906, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a maker of a check.

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for fines levied against the licensee or any of its officers, directors, shareholders, partners, or members, pursuant to section 45-925, for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 1994, LB 967, § 22; Laws 2001, LB 53, § 106; Laws 2006, LB 876, § 45; Laws 2008, LB851, § 24; Laws 2009, LB327, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

45-925 Violations; orders authorized; administrative fine; lien; failure to pay; separate violation.

(1) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has violated the Delayed Deposit Services Licensing Act or any rule, regulation, or order of the director thereunder, the director may order such person to pay (a) an administrative fine of not more than five thousand dollars for each separate violation and (b) the costs of investigation.

(2) If any person is found to have violated subdivision (1)(e), (1)(f), or (1)(g) of section 45-919, the director may also order such person to (a) return to the maker or makers all fees collected plus all or part of the amount of the check or checks which the licensee accepted in violation of such subdivision or subdivisions and (b) for a period up to one year not engage in any delayed deposit transaction with any maker for at least three days after the completion of a delayed deposit transaction with the same maker. If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (1) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

Source: Laws 1994, LB 967, § 25; Laws 2006, LB 876, § 46.

Cross References

Administrative Procedure Act, see section 84-920.

45-927 Fees, charges, costs, and fines; distribution.

All fees, charges, costs, and fines collected by the director under the Delayed Deposit Services Licensing Act shall be remitted to the State Treasurer. Fees, charges, and costs shall be credited to the Financial Institution Assessment Cash Fund, and fines shall be credited to the permanent school fund.

Source: Laws 1994, LB 967, § 27; Laws 1995, LB 599, § 15; Laws 2007, LB124, § 53.

ARTICLE 10

NEBRASKA INSTALLMENT LOAN ACT

Section

45-1001 Act, how cited.

Sections 45-1001 to 45-1069 shall be known and may be cited as the Nebraska Installment Loan Act.

Source: Laws 2001, LB 53, § 29; Laws 2005, LB 533, § 57; Laws 2009, LB328, § 40.

45-1002 Terms, defined; act; applicability.

(1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(c) Department means the Department of Banking and Finance;

(d) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the financial institution upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment;

(e) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to suspend all or part of a borrower's obligation to repay an extension of credit from the financial institution upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment;

(f) Director means the Director of Banking and Finance;

(g) Financial institution has the same meaning as in section 8-101;

(h) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(i) Licensee means any person who obtains a license under the Nebraska Installment Loan Act;

(j)(i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(ii) Mortgage loan originator does not include (A) any individual who is not otherwise described in subdivision (i)(A) of this subdivision and who performs purely administrative or clerical tasks on behalf of a person who is described in subdivision (i) of this subdivision, (B) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, or (C) a person or entity solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(k) Nationwide Mortgage Licensing System and Registry means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies;

(l) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity; and

(m) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land.

(2) Except as provided in subsection (3) of section 45-1017 and subsection (4) of section 45-1019, no revenue arising under the Nebraska Installment Loan Act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Source: Laws 1941, c. 90, § 1, p. 345; C.S.Supp.,1941, § 45-131; Laws 1943, c. 107, § 1, p. 369; R.S.1943, § 45-114; Laws 1961, c. 225, § 1, p. 668; Laws 1963, Spec. Sess., c. 7, § 7, p. 92; Laws 1979, LB 87, § 1; Laws 1982, LB 941, § 1; Laws 1993, LB 121, § 264; Laws 1997, LB 137, § 20; Laws 1997, LB 555, § 3; R.S.1943, (1998), § 45-114; Laws 2001, LB 53, § 30; Laws 2003, LB 131, § 30; Laws 2003, LB 217, § 38; Laws 2006, LB 876, § 48; Laws 2009, LB328, § 41; Laws 2010, LB571, § 10; Laws 2010, LB892, § 19.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB571, section 10, with LB892, section 19, to reflect all amendments.

Note: Changes made by LB892 became effective March 4, 2010. Changes made by LB571 became effective July 15, 2010.

Cross References

Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-1005 Installment loans; license; application; fee.

Any person who desires to obtain an original license to engage in the business of lending money under the terms and conditions of the Nebraska Installment Loan Act shall apply to the department for the license under oath,

on a form prescribed by the department, and pay an original license fee of five hundred dollars. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1941, c. 90, § 5, p. 346; C.S.Supp.,1941, § 45-133; R.S. 1943, § 45-117; Laws 1973, LB 39, § 1; Laws 1979, LB 87, § 2; Laws 1997, LB 555, § 5; Laws 1997, LB 752, § 115; R.S.1943, (1998), § 45-117; Laws 2001, LB 53, § 33; Laws 2005, LB 533, § 58; Laws 2010, LB892, § 20.
Effective date March 4, 2010.

45-1006 Installment loans; application hearing; protest; procedure.

(1) When an application for an original installment loan license has been accepted by the director as substantially complete, notice of the filing of the application shall be published by the department three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the business of lending money. A public hearing shall be held on each application except as provided in subsection (2) of this section. The date for hearing shall not be less than thirty days after the last publication. Written protest against the issuance of the license may be filed with the department by any person not less than five days before the date set for hearing. The director, in his or her discretion, may grant a continuance. The costs of the hearing shall be paid by the applicant. The director may deny any application for license after hearing. The director shall, in his or her discretion, make examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be paid by the applicant.

(2) The director may waive the hearing requirements of subsection (1) of this section if (a) the applicant has held, and operated under, a license to engage in the business of lending money in Nebraska pursuant to the Nebraska Installment Loan Act for at least one calendar year immediately prior to the filing of the application, (b) no written protest against the issuance of the license has been filed with the department within fifteen days after publication of a notice of the filing of the application one time in a newspaper of general circulation in the county where the applicant proposes to operate the business of lending money, and (c) in the judgment of the director, the experience, character, and general fitness of the applicant warrant the belief that the applicant will comply with the Nebraska Installment Loan Act.

(3) The expense of any publication made pursuant to this section shall be paid by the applicant.

Source: Laws 1941, c. 90, § 11, p. 349; C.S.Supp.,1941, § 45-139; R.S. 1943, § 45-118; Laws 1997, LB 555, § 6; Laws 1999, LB 396, § 25; R.S.Supp.,2000, § 45-118; Laws 2001, LB 53, § 34; Laws 2005, LB 533, § 59; Laws 2008, LB851, § 25.

45-1007 Installment loans; license; bond.

(1) Except as otherwise provided in this section, a license shall not be issued until the applicant gives to the department a bond in the penal sum of fifty thousand dollars to be executed by the applicant and a surety company authorized to do business in the State of Nebraska, conditioned for the faithful performance by the applicant, as a licensee, of the duties and obligations

pertaining to the business of lending money and the prompt payment of any judgment recovered against the applicant, as a licensee, under the Nebraska Installment Loan Act.

(2)(a) Except as provided in subsection (3) of this section, a licensee who employs or enters into an independent agent agreement with an individual required to obtain a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act shall maintain the surety bond required by subsection (1) of this section and a supplemental surety bond. The supplemental surety bond posted by such licensee shall cover all mortgage loan originators who are employees or independent agents of such licensee. The supplemental surety bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against such licensee arising from a transaction involving a residential mortgage loan, as defined in section 45-702, or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, the licensee. The initial amount of the supplemental surety bond shall be one hundred thousand dollars.

(b) Upon filing of the mortgage report of condition required by section 45-1018, a licensee shall maintain or increase its supplemental surety bond to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding year in accordance with the following table. A licensee may decrease its supplemental surety bond in accordance with the following table if the supplemental surety bond required is less than the amount of the supplemental surety bond on file with the department.

Dollar Amount of Closed Residential Mortgage Loans	Surety Bond Required
$0.00 to $5,000,000.00	$100,000.00
$5,000,000.01 to $10,000,000.00	$125,000.00
$10,000,000.01 to $25,000,000.00	$150,000.00
Over $25,000,000.00	$200,000.00

(3)(a) A person who has been issued multiple licenses pursuant to section 45-1010 and who employs or enters into an independent agent agreement with an individual required to obtain a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act shall maintain a surety bond for each license that he, she, or it holds as required in subsection (1) of this section and shall also post one supplemental surety bond which shall cover all licenses held by such person. The supplemental surety bond posted by such person shall cover all mortgage loan originators who are employees or independent agents of such person. The supplemental surety bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against such person arising from a transaction involving a residential mortgage loan or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, the person. The amount of such supplemental surety bond shall be as follows:

(i) The initial supplemental surety bond shall be in the amount of one hundred thousand dollars; and

(ii) Upon filing of the mortgage report of condition required by section 45-1018, the person's supplemental surety bond shall be maintained in accor-

dance with subdivision (2)(b) of this section. For purposes of calculating the amount of the bond that is required, the total dollar amount of the closed loans shall include all residential mortgage loans in this state closed by the person.

(b) A person who holds both one or more installment loan licenses pursuant to the Nebraska Installment Loan Act and a mortgage banker license pursuant to the Residential Mortgage Licensing Act shall not be required to post and maintain a supplemental surety bond if such person meets the following conditions:

(i) The person maintains a surety bond as provided in subsection (1) of this section for each installment loan license he, she, or it holds;

(ii) The person maintains a mortgage banker surety bond as provided in section 45-724; and

(iii) The mortgage banker surety bond covers all transactions involving residential mortgage loans, including such transactions done pursuant to the person's installment loan license or licenses.

(4) Should the department determine that a licensee does not maintain a supplemental surety bond in the amount required by subsection (2) or (3) of this section, the department shall give written notification to the licensee requiring him, her, or it to increase the surety bond within thirty days to the amount required by subsection (2) or (3) of this section.

(5) The bond or a substitute bond required by subsection (1) of this section shall remain in effect or the licensee shall immediately cease making loans and the license shall be canceled by the director.

Source: Laws 1941, c. 90, § 31, p. 357; C.S.Supp.,1941, § 45-157; R.S. 1943, § 45-119; Laws 1997, LB 555, § 7; R.S.1943, (1998), § 45-119; Laws 2001, LB 53, § 35; Laws 2003, LB 218, § 13; Laws 2006, LB 876, § 49; Laws 2009, LB328, § 42.

Cross References

Residential Mortgage Licensing Act, see section 45-701.

45-1008 License; issuance; requirements; term.

Upon the filing of an application under the Nebraska Installment Loan Act, the payment of the license fee, and the approval of the required bond, the director shall investigate the facts regarding the applicant. If the director finds that (1) the experience, character, and general fitness of the applicant, of the applicant's partners or members if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently within the purposes of the act, and (2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the department shall issue and deliver an original license to the applicant to make loans at the location specified in the application, in accordance with the act. The license shall remain in full force and effect until the following March 1 and from year to year thereafter, if and when renewed under the act, until it is surrendered by the licensee or canceled,

suspended, or revoked under the act. Beginning January 1, 2010, initial licenses shall remain in full force and effect until the next succeeding December 31.

Source: Laws 1941, c. 90, § 12, p. 349; C.S.Supp.,1941, § 45-140; R.S. 1943, § 45-120; Laws 1993, LB 121, § 265; Laws 1997, LB 555, § 8; R.S.1943, (1998), § 45-120; Laws 2001, LB 53, § 36; Laws 2009, LB328, § 43.

45-1013 Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.

(1) Except as provided in subsection (2) of this section, for the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

(2) Licenses which expire on March 1, 2010, shall be renewed until December 31, 2010, upon compliance with subsection (1) of this section. For such renewals, the department shall prorate the fees provided in subsection (1) of this section using a factor of ten-twelfths.

(3) For the relocation of its place of business, a licensee shall file with the department a fee of one hundred fifty dollars and an application containing such information as the director may require to determine whether the relocation should be approved. Upon receipt of the fee and application, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the licensee proposes to relocate. If the director receives any substantive objection to the proposed relocation within fifteen days after publication of such notice, he or she shall hold a hearing on the application in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act. The expense of any publication required by this section shall be paid by the applicant licensee.

Source: Laws 1941, c. 90, § 6, p. 347; C.S.Supp.,1941, § 45-134; R.S. 1943, § 45-126; Laws 1973, LB 39, § 2; Laws 1995, LB 599, § 9; Laws 1997, LB 555, § 10; R.S.1943, (1998), § 45-126; Laws 2001, LB 53, § 41; Laws 2005, LB 533, § 60; Laws 2007, LB124, § 54; Laws 2009, LB328, § 44.

Cross References

Administrative Procedure Act, see section 84-920.

45-1014 Installment loans; fees; disposition.

All original license fees and annual renewal fees shall be collected by the department and remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund. All investigation and examination fees, charges, and costs collected by or paid to the department shall likewise be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund and shall be available for the uses and purposes of the fund.

Source: Laws 1941, c. 90, § 26, p. 355; C.S.Supp.,1941, § 45-154; R.S. 1943, § 45-127; Laws 1969, c. 584, § 46, p. 2373; Laws 1973, LB

39, § 3; Laws 1994, LB 967, § 31; Laws 1995, LB 7, § 41; Laws 1995, LB 599, § 10; R.S.1943, (1998), § 45-127; Laws 2001, LB 53, § 42; Laws 2007, LB124, § 55.

45-1017 Licensees; business, records, and accounts; inspection; expenses; fines; lien.

(1) The department shall inspect the business, records, and accounts of all persons that lend money subject to the Nebraska Installment Loan Act. The department may examine or investigate complaints about or reports of alleged violations by a licensee made to the department. The department may inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the act and who do not have a license under the act. The director may appoint examiners who shall, under his or her direction, investigate the loans and business and examine the books and records of licensees annually and more often as determined by the director. The expenses incurred by the department in examining the books and records of licensees and in administering the act during each calendar year shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(2) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection constitutes a separate violation.

(3) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Loan Act, any rule or regulation adopted and promulgated under the act, or any order issued under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(4) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (3) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs constitutes a separate violation of the act.

Source: Laws 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S.1943, § 45-130; Laws 1997, LB 137, § 21; Laws 1997, LB 555, § 13; Laws 1999, LB 396, § 27; R.S.Supp.,2000, § 45-130; Laws 2001, LB 53, § 45; Laws 2004, LB 999, § 38; Laws 2007, LB124, § 56.

Cross References

Administrative Procedure Act, see section 84-920.

45-1018 Licensees; reports.

(1) A licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

(2) Effective on January 1, 2011, a licensee shall submit a mortgage report of condition as required by section 45-726, on or before a date or dates established by rule, regulation, or order of the director.

Source: Laws 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S. 1943, § 45-131; R.S.1943, (1998), § 45-131; Laws 2001, LB 53, § 46; Laws 2003, LB 217, § 40; Laws 2004, LB 999, § 39; Laws 2009, LB328, § 45; Laws 2010, LB892, § 21.
Effective date March 4, 2010.

45-1019 Cease and desist order; hearing; judicial review; enforcement; violation; penalty.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated any provision of the Nebraska Installment Loan Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of written request from the affected person a hearing will be scheduled within thirty business days after the date of receipt of the written request unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act. The director may obtain an order from the district court of Lancaster County for the enforcement of the cease and desist order.

(4) A person who violates a cease and desist order of the director may, after notice and hearing and upon further order of the director, be subject to a penalty of not more than five thousand dollars for each act in violation of the cease and desist order. The department shall remit fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1941, c. 90, § 10, p. 349; C.S.Supp.,1941, § 45-138; R.S. 1943, § 45-132; Laws 1997, LB 555, § 14; R.S.1943, (1998), § 45-132; Laws 2001, LB 53, § 47; Laws 2009, LB328, § 46.

Cross References

Administrative Procedure Act, see section 84-920.

45-1024 Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.

(1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Except for loans secured by mobile homes, a licensee may not make loans for a period in excess of one hundred forty-five months if the amount of the loan is greater than three thousand dollars but less than twenty-five thousand dollars. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may not exceed one month by more than twenty-one days and may not fall short of one month by more than eleven days. The charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time

outstanding by applying the payment, or payments, first to charges at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging, collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees; premiums paid for nonfiling insurance; premiums paid on insurance policies covering tangible personal property securing the loan; amounts charged for a debt cancellation contract or a debt suspension contract, as agreed upon by the parties, if the debt cancellation contract or debt suspension contract is a contract of a financial institution and such contract is sold directly by such financial institution or by an unaffiliated, nonexclusive agent of such financial institution in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2006, and the financial institution is responsible for

the unaffiliated, nonexclusive agent's compliance with such part; title examinations; credit reports; survey; taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage; and amounts charged for a guaranteed asset protection waiver. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars, if the licensee has not made another loan to the borrower within the previous twelve months. If the licensee has made another loan to the borrower within the previous twelve months, a nonrefundable loan origination fee may only be charged on new funds advanced on each successive loan. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6)(a) Loans secured solely by real property that are not made pursuant to subdivision (11) of section 45-101.04 on real property shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except that for purposes of subdivision (6)(b) of this section, loan origination fees shall not be included in calculating the principal amount of the loan.

Source: Laws 1941, c. 90, § 15, p. 350; C.S.Supp.,1941, § 45-143; Laws 1943, c. 107, § 3, p. 370; R.S.1943, § 45-137; Laws 1957, c. 193, § 1, p. 684; Laws 1963, c. 273, § 2, p. 821; Laws 1963, Spec. Sess., c. 9, § 1, p. 103; Laws 1963, Spec. Sess., c. 7, § 9, p. 93; Laws 1979, LB 87, § 3; Laws 1980, LB 276, § 8; Laws 1982, LB

702, § 1; Laws 1984, LB 681, § 1; Laws 1994, LB 979, § 8; Laws 1995, LB 614, § 1; Laws 1997, LB 555, § 17; Laws 1999, LB 170, § 1; Laws 2000, LB 932, § 30; R.S.Supp.,2000, § 45-137; Laws 2001, LB 53, § 52; Laws 2003, LB 218, § 14; Laws 2004, LB 999, § 40; Laws 2005, LB 533, § 61; Laws 2006, LB 876, § 50; Laws 2009, LB328, § 47; Laws 2010, LB571, § 11.
Effective date July 15, 2010.

45-1025 Installment loans; additional charges authorized; loan period; violation; effect.

(1) Licensees may charge, contract for, or receive any amount or rate of interest permitted by section 45-101.03, 45-101.04, or 45-1024 upon any loan or upon any part or all of any aggregate indebtedness of the same person. Except as provided in subsection (2) of this section, the charging, contracting for, or receiving of a rate of interest permitted by section 45-101.04 does not exempt the licensee from compliance with the Nebraska Installment Loan Act.

(2)(a) Loans made by a licensee pursuant to subdivision (4) of section 45-101.04 are not subject to the Nebraska Installment Loan Act if such loans are not made on real property.

(b) Loans made by a licensee pursuant to subdivision (11) of section 45-101.04 on real property are not subject to the Nebraska Installment Loan Act. A licensee making such loans shall comply with and be subject to the Residential Mortgage Licensing Act with respect to such loans, except that the licensee shall not be required to obtain a mortgage banker license under the Residential Mortgage Licensing Act.

(c) Any mortgage loan originator who works as an employee or independent agent of a licensee shall be required to obtain a mortgage loan originator license and shall be subject to the Residential Mortgage Licensing Act.

(3) Except as provided in subdivision (2)(a) of section 45-1024, no licensee shall enter into any loan contract under the Nebraska Installment Loan Act under which the borrower agrees to make any payment of principal more than thirty-six calendar months from the date of making such contract when the principal balance is not more than three thousand dollars. Every loan contract precomputed pursuant to subsection (2) of section 45-1024 shall provide for repayment of principal and charges in installments which shall be payable at approximately equal periodic intervals of time and so arranged that no installment is substantially greater in amount than any preceding installment. When necessary in order to facilitate payment in accordance with the borrower's principal source of income or when the loan contract is not precomputed pursuant to subsection (2) of section 45-1024, the payment schedule may reduce or omit installment payments. Any loan contract made in violation of this section, either knowingly or without the exercise of due care to prevent the violation, shall not on that account be void, but the licensee has no right to collect or receive any interest or charges on such loan. If any interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect thereafter any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee

shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

Source: Laws 1941, c. 90, § 16, p. 351; C.S.Supp.,1941, § 45-144; Laws 1943, c. 107, § 4, p. 371; R.S.1943, § 45-138; Laws 1953, c. 155, § 2, p. 490; Laws 1957, c. 193, § 2, p. 685; Laws 1963, Spec. Sess., c. 9, § 2, p. 108; Laws 1963, Spec. Sess., c. 7, § 10, p. 94; Laws 1971, LB 18, § 1; Laws 1979, LB 87, § 4; Laws 1982, LB 702, § 2; Laws 1984, LB 681, § 2; Laws 1994, LB 979, § 9; Laws 1997, LB 555, § 18; R.S.1943, (1998), § 45-138; Laws 2001, LB 53, § 53; Laws 2003, LB 218, § 15; Laws 2004, LB 999, § 41; Laws 2009, LB328, § 48.

Cross References

Residential Mortgage Licensing Act, see section 45-701.

45-1026 Installment loans; insurance upon security; licensee may require; restrictions; refunds; when.

(1) The following types of insurance or one or more of the following types of insurance may be written in connection with loans made by licensees under the Nebraska Installment Loan Act:

(a) Fire, theft, windstorm, or comprehensive, including fire, theft, and windstorm, fifty dollars or more deductible collision, and bodily injury liability and property damage liability upon motor vehicles;

(b) Fire and extended-coverage insurance upon real property;

(c) Fire and extended-coverage insurance upon tangible personal property, limited to the principal amount of the loan;

(d) Involuntary unemployment or job protection insurance. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be rewritten. Such insurance shall not be required as a condition precedent to the making of such loan; and

(e) Life, health, and accident insurance or any of them, except that the amount of such insurance shall not exceed the total amount to be repaid under the loan contract and the term shall not extend beyond the final maturity date of the loan contract. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be written in connection with such loan. Such insurance shall not be required as a condition precedent to the making of such loan.

(2) In addition to the types of insurance written under subsection (1) of this section by licensees under the act, any other type of insurance or motor club service as defined in section 44-3707 may be provided for the benefit of a licensee's borrower or the borrower's immediate family whether or not in connection with a loan, except that such insurance or motor club service shall not be required as a condition precedent to the making of any loan. Nothing in this subsection alters or eliminates any insurance licensing requirements or certificate of authority requirements under the Motor Club Services Act.

(3) Notwithstanding sections 45-1024 and 45-1025, any gain or advantage, in the form of commission or otherwise, to the licensee or to any employee,

affiliate, or associate of the licensee from such insurance or motor club service or the sale thereof shall not be deemed to be an additional or further charge in connection with the loan contract. The insurance premium or motor club service contract fee may be collected from the borrower or financed through the loan contract at the time the loan is made.

(4)(a) Insurance permitted under this section shall be obtained through a duly licensed insurance agent, agency, or broker. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgage clause or other appropriate provision to protect the insurable interest of the licensee.

(b) Motor club services permitted under this section shall be obtained through a motor club which holds a certificate of authority under the Motor Club Services Act.

(5) In the event of a renewal of a loan contract, any insurance or motor club service sold pursuant to this section shall be canceled and (a) a refund of the unearned premium or motor club service contract fee credited or made before new insurance or motor club service of the same type as that being canceled may be rewritten or (b) the holder of the loan contract shall send notice to the buyer within fifteen business days after cancellation of the name, address, and telephone number of the insurance company or motor club which issued the insurance contract or motor club service contract or the party responsible for any refund and notice that the buyer may be eligible for a refund. A copy of such notice shall be retained by the holder of the loan contract.

(6) If any insurance or motor club service sold pursuant to this section is canceled or the premium or motor club service contract fee adjusted during the term of the loan contract, any refund of the insurance premium or motor club service contract fee plus the unearned interest thereon received by the holder shall be credited by the holder to the loan contract or otherwise refunded, except to the extent applied toward payment for similar insurance or motor club service protecting the interests of the buyer and the holder or either of them.

(7) If any insurance or motor club service sold pursuant to this section is canceled due to the payment of all sums for which the buyer is liable under a loan contract, the holder of the loan contract shall, upon receipt of payment of all sums due, send notice to the buyer within fifteen business days after payment of the sums due of the name, address, and telephone number of the insurance company or motor club which issued the insurance contract or motor club service contract or the party responsible for any refund and notice that the buyer may be eligible for a refund. A copy of such notice shall be retained by the holder of the loan contract. This subsection does not apply if the holder of the loan contract previously credited the refund of the insurance premium or motor club service contract fee to the loan contract or otherwise refunded the insurance premium or motor club service contract fee to the buyer.

Source: Laws 1941, c. 90, § 17, p. 351; C.S.Supp.,1941, § 45-145; R.S. 1943, § 45-139; Laws 1953, c. 155, § 3, p. 491; Laws 1987, LB 306, § 2; Laws 1990, LB 1094, § 1; Laws 1997, LB 555, § 19; R.S.1943, (1998), § 45-139; Laws 2001, LB 53, § 54; Laws 2002, LB 957, § 23; Laws 2006, LB 876, § 51.

Cross References

Motor Club Services Act, see section 44-3701.

45-1032 Surrender of license; effect.

A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender. Surrender of a license (1) shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-1033 for acts committed before the surrender and (2) shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower. The department shall issue a notice of cancellation of the license following such surrender.

Source: Laws 2001, LB 53, § 60; Laws 2005, LB 533, § 62.

45-1033 License; administrative fine; disciplinary actions; failure to renew.

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act, suspend or revoke any license issued pursuant to the Nebraska Installment Loan Act. The director may also impose an administrative fine on the licensee for each separate violation of the act. The director may take one or more of these actions if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Nebraska Installment Loan Act or rules and regulations adopted and promulgated under the act, any order issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has knowingly provided or caused to be provided to the director any false or fraudulent representation of a material fact or any false or fraudulent financial statement or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's business, records, and accounts pursuant to subsection (1) of section 45-1017 or refused or failed to comply with subsection (2) of section 45-1017 or failed to make any report required under section 45-1018. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(f) The licensee has failed to maintain records as required by the director following written notice. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal

law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee has violated the written restrictions or conditions under which the license was issued;

(i) The licensee, or if the licensee is a business entity, one of the officers, directors, members, partners, or controlling shareholders, was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law; or

(j) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act.

(3)(a) If a licensee fails to renew its license as required by subsection (1) of section 45-1013 and does not voluntarily surrender the license pursuant to section 45-1032, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-1007, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be imposed against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to this section or section 45-1069 for acts committed before the surrender.

Source: Laws 2001, LB 53, § 61; Laws 2003, LB 218, § 16; Laws 2005, LB 533, § 63; Laws 2007, LB124, § 57; Laws 2009, LB328, § 49.

Cross References

Administrative Procedure Act, see section 84-920.

45-1033.01 License and registration under Nationwide Mortgage Licensing System and Registry; department; powers and duties; director; duties.

(1) The department shall require licensees to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but not be limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

(i) Criminal history through fingerprint or other data bases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with prelicensure education and testing and continuing education;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the Nebraska Installment Loan Act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report violations of the act pertaining to residential mortgage loans, as defined in section 45-702, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 45-1033.02.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Source: Laws 2009, LB328, § 50; Laws 2010, LB892, § 22.
Effective date March 4, 2010.

45-1033.02 Information sharing; privilege and confidentiality; limitations; applicability of section; director; powers.

(1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(b) Information or material that is subject to a privilege or confidentiality under subdivision (1)(a) of this section shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (1)(a) of this section that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director.

Source: Laws 2009, LB328, § 51; Laws 2010, LB892, § 23.
Effective date March 4, 2010.

45-1055 Writing evidencing borrower's obligation; form; copies; fee; licensee; duties.

(1) The licensee shall give to the borrower a copy of any writing evidencing a loan if the writing requires or provides for the signature of the borrower. The writing evidencing the borrower's obligation to pay under a loan shall contain a clear and conspicuous notice in form and content substantially as follows:

NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at

any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.

(2) Upon written request of a borrower, the licensee shall provide a written statement of the dates and amounts of payments made and the amounts of any default and deferment charges assessed preceding the month in which the request is received and the total amount unpaid as the end of the period covered by the statement and a copy of the loan agreement, security agreement, and a facsimile of any insurance certificate issued as part of the transaction, if applicable. The licensee may charge a reasonable fee for such copies, not to exceed fifty cents per page.

(3) The licensee shall answer in writing, within ten business days after receipt, any written request for payoff information from the borrower or the borrower's representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged.

Source: Laws 1979, LB 87, § 18; R.S.1943, (1998), § 45-185; Laws 2001, LB 53, § 83; Laws 2005, LB 533, § 65.

45-1068 Reverse-mortgage loan; rules governing; how made or acquired; charges authorized; forfeiture by lender.

(1) For purposes of this section, reverse-mortgage loan means a loan made by a licensee which (a) is secured by residential real estate, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the residential real estate given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of this section.

(2) Reverse-mortgage loans shall be governed by the following rules without regard to the requirements set out elsewhere for other types of mortgage transactions: (a) Payment in whole or in part is permitted without penalty at any time during the period of the loan; (b) an advance and interest on the advance have priority over a lien filed after the closing of a reverse-mortgage loan; (c) an interest rate may be fixed or adjustable and may also provide for interest that is contingent on appreciation in the value of the residential real estate; and (d) the advance shall not be reduced in amount or number based on an adjustment in the interest rate when a reverse-mortgage loan provides for periodic advances to a borrower.

(3) Reverse-mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions: (a) Limitations on the purpose and use of future advances or any other mortgage proceeds; (b) limitations on future advances to a term of years or limitations on the term of credit line advances; (c) limitations on the term during which future advances take priority over intervening advances; (d) requirements that a maximum mortgage amount be stated in the mortgage; (e) limitations on loan-to-value ratios; (f) prohibitions on balloon payments; (g) prohibitions on compounded interest and interest on interest; and (h) requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

(4) A licensee may, in connection with a reverse-mortgage loan, charge to the borrower (a) a nonrefundable loan origination fee which does not exceed two percent of the appraised value of the owner-occupied principal residence at the time the loan is made, (b) a reasonable fee paid to third parties originating loans on behalf of the licensee, and (c) such other fees as are necessary and required, including fees for inspections, insurance, appraisals, and surveys.

(5) Licensees failing to make loan advances as required in the loan documents and failing to cure the default as required in the loan documents shall forfeit an amount equal to the greater of two hundred dollars or one percent of the amount of the loan advance the licensee failed to make.

Source: Laws 1995, LB 397, § 2; Laws 1997, LB 555, § 27; R.S.1943, (1998), § 45-1,116; Laws 2001, LB 53, § 101; Laws 2010, LB892, § 24.
Effective date March 4, 2010.

45-1069 Administrative fine; procedure; lien.

(1) The director may, following a hearing under the Administrative Procedure Act, impose an administrative fine against any officer, director, shareholder, partner, or member of a licensee, if the director finds the licensee or any such person participated in or had knowledge of any act prohibited by the Nebraska Installment Loan Act or otherwise violated the act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to section 45-1033.

(2) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by section 45-1033 or otherwise violated the Nebraska Installment Loan Act or any rule and regulation or order adopted thereunder, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation.

(3) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

Source: Laws 2005, LB 533, § 64.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 11
GUARANTEED ASSET PROTECTION WAIVER ACT

Section
45-1101. Act, how cited.

Section
45-1102. Purpose of act; exclusions from act; exemption from insurance requirements.
45-1103. Terms, defined.
45-1104. Guaranteed asset protection waivers; not insurance; exempt from insurance laws; sale options; separate statement of cost; part of finance agreement; sale and marketing restrictions.
45-1105. Guaranteed asset protection waiver; disclosures required.
45-1106. Guaranteed asset protection waiver agreement; authorized terms; cancellation or early termination of finance agreement; refund; calculation; disposition.
45-1107. Modification of guaranteed asset protection waiver; limitations.

45-1101 Act, how cited.

Sections 45-1101 to 45-1107 shall be known and may be cited as the Guaranteed Asset Protection Waiver Act.

Source: Laws 2010, LB571, § 1.
Effective date July 15, 2010.

45-1102 Purpose of act; exclusions from act; exemption from insurance requirements.

(1) The purpose of the Guaranteed Asset Protection Waiver Act is to provide a framework within which guaranteed asset protection waivers are offered, sold, and provided in this state.

(2) The act does not apply to:

(a) An insurance policy offered by an insurer under the insurance laws of this state;

(b) A debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. part 37 or 12 C.F.R. part 721 or other federal law as such part or law existed on July 15, 2010; or

(c) Guaranteed asset protection waivers offered, sold, or provided to borrowers by a financial institution.

(3) Guaranteed asset protection waivers governed under the Guaranteed Asset Protection Waiver Act are not insurance and are exempt from the insurance laws of this state. Persons marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers that comply with the act are exempt from this state's insurance licensing requirements.

Source: Laws 2010, LB571, § 2.
Effective date July 15, 2010.

45-1103 Terms, defined.

For purposes of the Guaranteed Asset Protection Waiver Act:

(1) Borrower means a debtor, retail buyer, or lessee under a finance agreement;

(2) Creditor means:

(a) The lender in a loan or credit transaction involving a motor vehicle;

(b) The lessor in a lease transaction involving a motor vehicle;

(c) Any retail seller of motor vehicles that provides credit to retail buyers of such motor vehicles if such entities comply with the provisions of the act; or

(d) The assignees of any of the foregoing to whom the credit obligation is payable;

(3) Creditor's designee means a person other than the creditor that performs administrative or operational functions pursuant to a guaranteed asset protection waiver program;

(4) Finance agreement means a loan, credit transaction, lease, or retail installment sales contract for the purchase or lease of a motor vehicle;

(5) Financial institution has the same meaning as in section 8-101;

(6) Free-look period means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. This period of time must not be shorter than thirty days;

(7) Guaranteed asset protection waiver means a contractual agreement wherein a creditor or the creditor's designee agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss as determined by the insurer issuing the motor vehicle insurance policy subject to the terms of the waiver or unrecovered theft as determined by the insurer issuing the motor vehicle insurance policy subject to the terms of the waiver of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement. If a borrower does not have motor vehicle insurance, the creditor or the creditor's designee will accept a report prepared pursuant to insurance industry standards by a qualified inspector declaring the motor vehicle a total loss or a law enforcement report declaring the motor vehicle an unrecovered theft. Nothing in the act shall be construed to require the waiver to pay more than the amount that would have been paid if the borrower had motor vehicle insurance at the time of loss;

(8) Motor vehicle means self-propelled or towed vehicles designed for personal or commercial use, including, but not limited to, automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and motorcycle, boat, camper, and personal watercraft trailers; and

(9) Person includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

Source: Laws 2010, LB571, § 3.
Effective date July 15, 2010.

45-1104 Guaranteed asset protection waivers; not insurance; exempt from insurance laws; sale options; separate statement of cost; part of finance agreement; sale and marketing restrictions.

(1) Guaranteed asset protection waivers offered, sold, or provided to borrowers under the terms of the Guaranteed Asset Protection Waiver Act are not insurance and are exempt from the insurance laws of this state. Persons marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers that comply with the act are exempt from this state's insurance licensing requirements.

(2) Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., and its implementing regulations, as such act and regulations existed on July 15, 2010, shall be separately stated and is not to be considered a finance charge or interest.

(4) The guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor.

(5) Neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.

(6) Persons marketing, selling, or offering to sell guaranteed asset protection waivers to a borrower shall not market such guaranteed asset protection waivers to any borrower or potential borrowers as being insured under a contractual liability or other insurance policy issued by an insurer.

Source: Laws 2010, LB571, § 4.
Effective date July 15, 2010.

45-1105 Guaranteed asset protection waiver; disclosures required.

Guaranteed asset protection waivers shall disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

(1) The name and address of the initial creditor or the creditor's designee and the borrower at the time of sale;

(2) The purchase price and the terms of the guaranteed asset protection waiver, including the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver;

(3) That the borrower may cancel the guaranteed asset protection waiver within the free-look period as specified in the waiver, and will be entitled to a full refund of the purchase price, so long as no benefits have been provided. In the event benefits have been provided during the free-look period, the borrower may receive a full refund less any benefits provided under the waiver;

(4) The procedure the borrower shall follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits;

(5) Whether or not the guaranteed asset protection waiver is cancelable after the free-look period and the conditions under which it may be canceled or terminated including the procedures for requesting any refund due;

(6) That in order to receive any refund due in the event of a borrower's cancellation of the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free-look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor or the creditor's designee within ninety days after the occurrence of the event terminating the finance agreement;

(7) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due, in the event of cancellation

of the guaranteed asset protection waiver or early termination of the finance agreement;

(8) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease shall be conditioned upon the purchase of the guaranteed asset protection waiver;

(9) That a guaranteed asset protection waiver is not insurance and is not regulated by the Department of Insurance and that the guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor or the creditor's designee; and

(10) The events or losses to which the guaranteed asset protection waiver does not apply.

Source: Laws 2010, LB571, § 5.
Effective date July 15, 2010.

45-1106 Guaranteed asset protection waiver agreement; authorized terms; cancellation or early termination of finance agreement; refund; calculation; disposition.

(1) Guaranteed asset protection waiver agreements may be cancelable or noncancelable after the free-look period. A creditor or the creditor's designee may offer a borrower a waiver that does not provide for a refund if the creditor or the creditor's designee also offers the borrower a bona fide option to purchase a comparable waiver that provides for a refund. Guaranteed asset protection waivers shall provide that if a borrower cancels a waiver within the free-look period, the borrower will be entitled to a full refund of the purchase price, so long as no benefits have been provided. In the event benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the waiver.

(2) In the event of a borrower's cancellation of the guaranteed asset protection waiver or early termination of the finance agreement, after the agreement has been in effect beyond the free-look period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise. The creditor or the creditor's designee shall calculate the amount of the refund using a method at least as favorable to the borrower as the actuarial method. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, must provide a written request to the creditor or the creditor's designee within ninety days after the event terminating the waiver or finance agreement.

(3) If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or the creditor's designee and applied as set forth in subsection (4) of this section.

(4) Any cancellation refund under this section may be applied by the creditor or the creditor's designee as a reduction of the amount owed under the finance agreement unless the borrower can show that the finance agreement has been paid in full.

Source: Laws 2010, LB571, § 6.
Effective date July 15, 2010.

45-1107 Modification of guaranteed asset protection waiver; limitations.

The creditor or the creditor's designee shall not offer a guaranteed asset protection waiver when the guaranteed asset protection waiver contains terms that allow the creditor or the creditor's designee to modify, unilaterally, the guaranteed asset protection waiver, unless (1) the modification is favorable to the borrower and is made without any additional charge to the borrower or (2) the borrower is notified of the proposed modification and has the option to cancel the guaranteed asset protection waiver without penalty.

Source: Laws 2010, LB571, § 7.
Effective date July 15, 2010.

ARTICLE 12

NEBRASKA CONSTRUCTION PROMPT PAY ACT

Section

45-1201 Act, how cited.

Sections 45-1201 to 45-1210 shall be known and may be cited as the Nebraska Construction Prompt Pay Act.

Source: Laws 2010, LB552, § 1.
Operative date October 1, 2010.

45-1202 Terms, defined.

For purposes of the Nebraska Construction Prompt Pay Act:

(1) Contractor includes individuals, firms, partnerships, limited liability companies, corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement coming within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor also includes any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person;

(2) Owner means a person (a) who has an interest in any real property improved, (b) for whom an improvement is made, or (c) who contracted for an improvement to be made. Owner includes a person, an entity, or any political subdivision of this state. Owner does not include the State of Nebraska;

(3) Owner's representative means an architect, an engineer, or a construction manager in charge of a project for the owner or such other contract representative or officer as designated in the contract document as the party representing the owner's interest regarding administration and oversight of the project;

(4) Real property means real estate that is improved, including private and public land, and leaseholds, tenements, and improvements placed on the real property;

(5) Receipt means actual receipt of cash or funds by the contractor or subcontractor; and

(6) Subcontractor means a person or an entity that has contracted to furnish labor or materials to, or performed labor or supplied materials for, a contractor or another subcontractor in connection with a contract to improve real property. Subcontractor includes materialmen and suppliers.

Source: Laws 2010, LB552, § 2.
Operative date October 1, 2010.

45-1203 Contractor; payment; payment request; subcontractor; payment.

(1) When a contractor has performed work in accordance with the provisions of a contract with an owner, the owner shall pay the contractor within thirty days after receipt by the owner or the owner's representative of a payment request made pursuant to the contract.

(2) When a subcontractor has performed work in accordance with the provisions of a subcontract and all conditions precedent to payment contained in the subcontract have been satisfied, the contractor shall pay the subcontractor and the subcontractor shall pay his, her, or its subcontractor, within ten days after receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for the subcontractor's work and materials based on work completed or service provided under the subcontract for which the subcontractor has properly requested payment, if the subcontractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the work.

Source: Laws 2010, LB552, § 3.
Operative date October 1, 2010.

45-1204 Withholdings; authorized.

When work has been performed pursuant to a contract, a party may only withhold payment:

(1) For retainage, in an amount not to exceed the amount specified in the contract, if applicable, until the work is substantially complete;

(2) Of a reasonable amount, to the extent that such withholding is allowed in the contract, for any of the following reasons:

(a) Reasonable evidence showing that the contractual completion date will not be met due to unsatisfactory job progress;

(b) Third-party claims filed or reasonable evidence that such a claim will be filed with respect to work under the contract; or

(c) Failure of the contractor to make timely payments for labor, equipment, subcontractors, or materials; or

(3) After substantial completion, in an amount not to exceed one hundred twenty-five percent of the estimated cost to complete the work remaining on the contract.

Source: Laws 2010, LB552, § 4.
Operative date October 1, 2010.

45-1205 Delay in payment; additional interest payment.

Except as provided in section 45-1204, if a periodic or final payment to (1) a contractor is delayed by more than thirty days after receipt of a properly submitted periodic or final payment request by the owner or owner's representative or (2) a subcontractor is delayed by more than ten days after receipt of a periodic or final payment by the contractor or subcontractor, then the remitting party shall pay the contractor or subcontractor interest due until such amount is paid, beginning on the day following the payment due date at the rate of one percent per month or a pro rata fraction thereof on the unpaid balance. Interest is due under this section only after the person charged the interest has been notified of the provisions of this section by the contractor or subcontractor. Acceptance of progress payments or a final payment shall release all claims for interest on such payments.

Source: Laws 2010, LB552, § 5.
Operative date October 1, 2010.

45-1206 Other remedies available.

The Nebraska Construction Prompt Pay Act shall not modify the remedies available to any person under the terms of a contract in existence prior to October 1, 2010, or by any other statute.

Source: Laws 2010, LB552, § 6.
Operative date October 1, 2010.

45-1207 Residential real property; applicability of act.

The Nebraska Construction Prompt Pay Act does not apply to improvements to real property intended for residential purposes when the residence consists of no more than four residential units.

Source: Laws 2010, LB552, § 7.
Operative date October 1, 2010.

45-1208 Applicability to contracts entered into on or after October 1, 2010.

The Nebraska Construction Prompt Pay Act applies to contracts or subcontracts entered into on or after October 1, 2010.

Source: Laws 2010, LB552, § 8.
Operative date October 1, 2010.

45-1209 Contract provisions; void.

The following provisions in any contract or subcontract for construction work performed within the State of Nebraska shall be against public policy and shall be void and unenforceable:

(1) A provision that purports to waive, release, or extinguish rights to file a claim against a payment or performance bond, except that a contract or

subcontract may require a contractor or subcontractor to provide a waiver or release of such rights as a condition for payment, but only to the extent of the amount of the payment received;

(2) A provision that purports to make any state law other than that of Nebraska applicable to or governing any contract for construction within the state; or

(3) A provision that purports to require that the venue for a court or arbitration hearing be held at any location outside of the state.

Source: Laws 2010, LB552, § 9.
Operative date October 1, 2010.

45-1210 Construction performed for political subdivision; liquidated or unliquidated claim; procedure; civil action authorized.

(1) Any liquidated or unliquidated claim against any political subdivision of this state arising from construction performed for such political subdivision shall: (a) Be presented in writing to the individual or officer as set forth in subsection (2) of this section; (b) state the name of the claimant and the amount of the claim; and (c) identify the item or service for which payment is claimed or the time, place, nature, and circumstance giving rise to the claim. All claims shall be filed within one hundred eighty days after the date of substantial completion of the construction project.

(2) A construction contract entered into by any political subdivision of this state may provide the name and location of the office in which a claim under this section may be filed. In the absence of such provision, a written claim shall be filed as follows:

(a) Claims against a city of the metropolitan, primary, first, or second class shall be filed with the appropriate city clerk;

(b) Claims against a village shall be filed with the village clerk;

(c) Claims against a county shall be filed with the county clerk; and

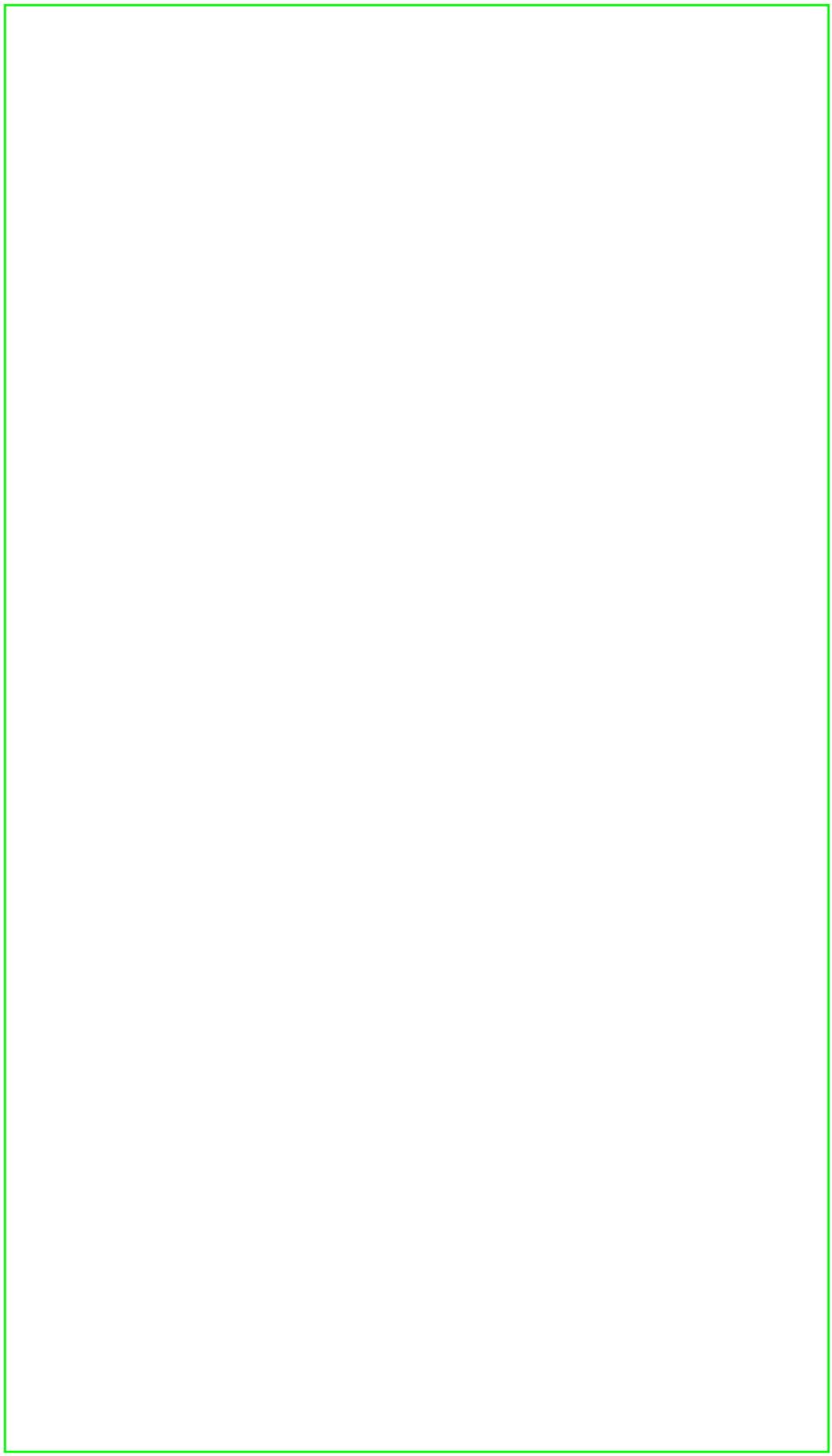
(d) Claims against any other political subdivision shall be filed with the person who executed the contract on behalf of the political subdivision or that person's successor in office.

(3) The applicable political subdivision shall issue a decision on the claim within ninety days after receipt thereof. If no decision has been issued after such period, the claim shall be deemed to be denied in whole and the claimant may commence an action in accordance with subsection (4) of this section.

(4) If a claim is denied in whole or in part, a claimant may bring a civil action on the claim. An action under this subsection may only be brought within two years after the denial of the claim or the date upon which the claim is deemed to be denied. Any such action shall be in the nature of an original action and not an appeal and shall be commenced in the district court of the county in which the construction project at issue was located. Either party may appeal from the decision of the district court.

(5) Notwithstanding any other provision of law in Chapters 13, 14, 15, 16, 17, and 23, claims against a political subdivision of this state arising from construction performed for such political subdivision shall be governed by this section.

Source: Laws 2010, LB552, § 10.
Operative date October 1, 2010.



CHAPTER 46
IRRIGATION AND REGULATION OF WATER

Article.

ARTICLE 2
GENERAL PROVISIONS

(e) ADJUDICATION OF WATER RIGHTS

(f) APPLICATION FOR WATER

(g) IRRIGATION WORKS; CONSTRUCTION, OPERATION, AND REGULATION

(j) WATER REUSE PITS

(e) ADJUDICATION OF WATER RIGHTS

46-226 Determination of priority and amount of appropriation; duty of department; certain court orders; department; powers.

(1) The department shall make proper arrangements for the determination of priorities of right to use the public waters of the state and determine the same. The method of determining the priority and amount of appropriation shall be fixed by the department.

(2)(a) The department is authorized to administer any riparian water right that has been validated and recognized in a court order from a court of lawful jurisdiction in the state.

(b) The only surface water appropriations that may be closed for a riparian water right are appropriations held by persons who were parties to the lawsuit validating the riparian water right or appropriations with a priority date subsequent to the date of the court order.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 7, p. 835; C.S.1922, § 8426; C.S.1929, § 81-6307; R.S.1943, § 46-226; Laws 2000, LB 900, § 95; Laws 2009, LB184, § 1.

46-229.02 Appropriations; preliminary determination of nonuse; notice; order of cancellation; procedure.

(1) If, based upon the results of a field investigation or upon information, however obtained, the department makes preliminary determinations (a) that an appropriation has not been used, in whole or in part, for a beneficial or useful purpose or having been so used at one time has ceased to be used, in whole or in part, for such purpose for more than five consecutive years and (b) that the department knows of no reason that constitutes sufficient cause, as

provided in section 46-229.04, for such nonuse or that such nonuse has continued beyond the additional time permitted because of the existence of any applicable sufficient cause, the department shall serve notice of such preliminary determinations upon the owner or owners of such appropriation and upon any other person who is an owner of the land under such appropriation. Such notice shall contain the information required by section 46-229.03, shall be provided in the manner required by such section, and shall be posted on the department's web site. Each owner of the appropriation and any owner of the land under such appropriation shall have thirty days after the mailing or last publication, as applicable, of such notice to notify the department, on a form provided by the department, that he or she contests the department's preliminary determination of nonuse or the department's preliminary determination of the absence of sufficient cause for such nonuse. Such notification shall indicate the reason or reasons the owner is contesting the department's preliminary determination and include any information the owner believes is relevant to the issues of nonuse or sufficient cause for such nonuse.

(2) If no owner of the appropriation or of the land under the appropriation provides notification to the department in accordance with subsection (1) of this section, the director may issue an order canceling the appropriation in whole or in part. The extent of such cancellation shall not exceed the extent described in the department's notice to the owner or owners in accordance with subsection (1) of this section. A copy of the order canceling the appropriation, or part thereof, shall be posted on the department's web site and shall be provided to the owner or owners of the appropriation and to any other owner of the land under the appropriation in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable. No cancellation under this subsection shall prohibit an irrigation district, a reclamation district, a public power and irrigation district, or a mutual irrigation company or canal company from asserting the rights provided by subsections (5) and (6) of section 46-229.04.

(3) If an owner of the appropriation provides notification to the department in accordance with subsection (1) of this section, the department shall review the owner's stated reasons for contesting the department's preliminary determination and any other information provided with the owner's notice. If the department determines that the owner has provided sufficient information for the department to conclude that the appropriation should not be canceled, in whole or in part, it shall inform the owners of the appropriation, and any other owners of the land under the appropriation, of such determination.

(4) If the department determines that an owner has provided sufficient information to support the conclusion that the appropriation should be canceled only in part and if (a) the owner or owners filing the notice of contest agree in writing to such cancellation in part and (b) such owner or owners are the only known owners of the appropriation and of the land under the appropriation, the director may issue an order canceling the appropriation to the extent agreed to by the owner or owners and shall provide a copy of such order to such owner or owners.

(5) If the department determines that subsections (2), (3), and (4) of this section do not apply, it shall schedule and conduct a hearing on the cancellation of the appropriation in whole or in part. Notice of the hearing shall be provided to the owner or owners who filed notices with the department pursuant to subsection (1) of this section, to any other owner of the appropria-

tion known to the department, and to any other owner of the land under the appropriation. The notice shall be posted on the department's web site and shall be served or published, as applicable, in the manner provided in subsection (2), (3), or (4) of section 46-229.03, as applicable.

(6) Following a hearing conducted in accordance with subsection (5) of this section and subsection (1) of section 46-229.04, the director shall render a decision by order. A copy of the order shall be provided to the owner or owners of the appropriation and to any other person who is an owner of the land under the appropriation. The copy of the order shall be posted on the department's web site and shall be served or published, as applicable, in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable, except that if publication is required, it shall be sufficient for the department to publish notice that an order has been issued. Any such published notice shall identify the land or lands involved and shall provide the address and telephone number that may be used to obtain a copy of the order.

(7) A water appropriation that has not been perfected pursuant to the terms of the permit may be canceled by the department without complying with sections 46-229.01 to 46-229.04 if the owner of such appropriation fails to comply with any of the conditions of approval in the permit, except that this subsection does not apply to appropriations to which subsection (2) of section 46-237 applies.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(3), p. 521; Laws 1963, c. 278, § 1, p. 834; Laws 1983, LB 380, § 2; Laws 1984, LB 1000, § 1; Laws 2004, LB 962, § 7; Laws 2006, LB 1226, § 7.

46-229.03 Appropriations; preliminary determination of nonuse; notice; contents; service.

(1) The notice provided by the department in accordance with subsection (1) or (5) of section 46-229.02 shall contain: (a) A description of the appropriation; (b) the number assigned to the appropriation by the department; (c) the date of priority; (d) the point of diversion; (e) if the notice is published, the section or sections of land which contain the lands located under such appropriation; (f) if the notice is served by personal service or by registered or certified mail, a description of the lands which are located under such appropriation, a description of the information used by the department to reach the preliminary determinations of nonuse, and a copy of section 46-229.04; (g) a description of the owner's options in response to the notice; (h) a department telephone number which any person may call during normal business hours for more information regarding the owner's rights and options, including what constitutes sufficient cause for nonuse; (i) a copy of the form that such owner may file to contest such determination, if notice is provided in accordance with subsection (1) of section 46-229.02 and is mailed; (j) the location where the owner may obtain a form to file to contest such determination, if notice is provided in accordance with subsection (1) of section 46-229.02 and is published; and (k) if the notice is provided in accordance with subsection (5) of section 46-229.02, the date, time, and location of the hearing.

(2) For any owner whose name and address are known to the department or can be reasonably obtained by the department, the notice shall be served by personal service or by registered mail or certified mail. Any landowner's name or address shall be considered reasonably obtainable if that person is listed as an owner of the land involved, on the records of the county clerk or register of deeds for the county in which the land is located.

(3) For any owner whose name and address are not known to the department and cannot reasonably be obtained by the department, such notice shall be served by publication in a legal newspaper published or of general circulation in any county in which the place of diversion is located and in a legal newspaper published or of general circulation in each county containing land for which the right to use water under the appropriation is subject to cancellation. Each such publication shall be once each week for three consecutive weeks.

(4) Landowners whose property under such appropriation is located within the corporate limits of a city or village shall be served by the publication of such notice in a legal newspaper published or of general circulation in the county in which the city or village is located. The notice shall be published once each week for three consecutive weeks.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(4), p. 521; Laws 1957, c. 242, § 39, p. 852; Laws 1973, LB 186, § 5; Laws 1980, LB 648, § 1; Laws 1986, LB 960, § 32; Laws 1987, LB 140, § 3; Laws 2004, LB 962, § 8; Laws 2006, LB 1226, § 8.

46-229.04 Appropriations; hearing; decision; nonuse; considerations; consolidation of proceedings; when.

(1) At a hearing held pursuant to section 46-229.03, the verified field investigation report of an employee of the department, or such other report or information that is relied upon by the department to reach the preliminary determination of nonuse, shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no person appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If an interested person appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use or has ceased to be used for such purpose for more than five consecutive years, the same shall be declared canceled and annulled unless the department finds that (a) there has been sufficient cause for such nonuse as provided for in subsection (2), (3), or (4) of this section or (b) subsection (5) or (6) of this section applies.

(2) Sufficient cause for nonuse shall be deemed to exist for up to thirty consecutive years if such nonuse was caused by the unavailability of water for that use. For a river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 46-713 or determined by the department to be fully appropriated pursuant to section 46-714, the period of time within which sufficient cause for nonuse because of the unavailability of water may be deemed to exist may be extended beyond thirty years by the department upon petition therefor by the owner of the appropriation if the department determines that an integrated management plan being implemented in the river

basin, subbasin, or reach involved is likely to result in restoration of a usable water supply for the appropriation.

(3) Sufficient cause for nonuse shall be deemed to exist indefinitely if such nonuse was the result of one or more of the following:

(a) For any tract of land under separate ownership, the available supply was used but on only part of the land under the appropriation because of an inadequate water supply;

(b) The appropriation is a storage appropriation and there was an inadequate water supply to provide the water for the storage appropriation or less than the full amount of the storage appropriation was needed to keep the reservoir full; or

(c) The appropriation is a storage-use appropriation and there was an inadequate water supply to provide the water for the appropriation or use of the storage water was unnecessary because of climatic conditions.

(4) Sufficient cause for nonuse shall be deemed to exist for up to fifteen consecutive years if such nonuse was a result of one or more of the following:

(a) Federal, state, or local laws, rules, or regulations temporarily prevented or restricted such use;

(b) Use of the water was unnecessary because of climatic conditions;

(c) Circumstances were such that a prudent person, following the principles of good husbandry, would not have been expected to use the water;

(d) The works, diversions, or other facilities essential to use the water were destroyed by a cause not within the control of the owner of the appropriation and good faith efforts to repair or replace the works, diversions, or facilities have been and are being made;

(e) The owner of the appropriation was in active involuntary service in the armed forces of the United States or was in active voluntary service during a time of crisis;

(f) Legal proceedings prevented or restricted use of the water; or

(g) The land subject to the appropriation is under an acreage reserve program or production quota or is otherwise withdrawn from use as required for participation in any federal or state program or such land previously was under such a program but currently is not under such a program and there have been not more than five consecutive years of nonuse on that land since that land was last under that program.

The department may specify by rule and regulation other circumstances that shall be deemed to constitute sufficient cause for nonuse for up to fifteen years.

(5) When an appropriation is held in the name of an irrigation district, a reclamation district, a public power and irrigation district, a mutual irrigation company or canal company, or the United States Bureau of Reclamation and the director determines that water under that appropriation has not been used on a specific parcel of land for more than five years and that no sufficient cause for such nonuse exists, the right to use water under that appropriation on that parcel shall be terminated and notice of the termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The district or company holding such right shall have five years after the determination, or five years after an order of cancellation issued by the department following the filing of a voluntary

relinquishment of the water appropriation that has been signed by the landowner and the appropriator of record, to assign the right to use that portion of the appropriation to other land within the district or the area served by the company, to file an application for a transfer in accordance with section 46-290, or to transfer the right in accordance with sections 46-2,127 to 46-2,129. The department shall issue its order of cancellation within sixty days after receipt of the voluntary relinquishment unless the relinquishment is conditioned by the landowner upon an action of a governmental agency. If the relinquishment contains such a provision, the department shall issue its order of cancellation within sixty days after receipt of notification that such action has been completed. The department shall be notified of any such assignment within thirty days after such assignment. If the district or company does not assign the right to use that portion of the appropriation to other land, does not file an application for a transfer within the five-year period, or does not notify the department within thirty days after any such assignment, that portion of the appropriation shall be canceled without further proceedings by the department and the district or company involved shall be so notified by the department. During the time within which assignment of a portion of an appropriation is pending, the allowable diversion rate for the appropriation involved shall be reduced, as necessary, to avoid inconsistency with the rate allowed by section 46-231 or with any greater rate previously approved for such appropriation by the director in accordance with section 46-229.06.

(6) When it is determined by the director that an appropriation, for which the location of use has been temporarily transferred in accordance with sections 46-290 to 46-294, has not been used at the new location for more than five years and that no sufficient cause for such nonuse exists, the right to use that appropriation at the temporary location of use shall be terminated. Notice of that termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The right to reinitiate use of that appropriation at the location of use prior to the temporary transfer shall continue to exist for five years after the director's determination, but if such use is not reinitiated at that location within such five-year period, the appropriation shall be subject to cancellation in accordance with sections 46-229 to 46-229.04.

(7) If at the time of a hearing conducted in accordance with subsection (1) of this section there is an application for incidental or intentional underground water storage pending before the department and filed by the owner of the appropriation, the proceedings shall be consolidated.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 837; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(5), p. 521; Laws 1973, LB 186, § 6; Laws 1983, LB 380, § 3; Laws 1987, LB 140, § 4; Laws 1987, LB 356, § 1; Laws 1995, LB 350, § 3; Laws 2000, LB 900, § 100; Laws 2004, LB 962, § 9; Laws 2006, LB 1226, § 9; Laws 2007, LB701, § 15.

(f) APPLICATION FOR WATER

46-238 Construction of project; time restrictions; failure to comply; forfeiture; extension of time for completion of work; appeal.

(1) Within twelve months after the approval of any application for water for irrigation, power, or other useful purpose by the department, the person

making such application shall commence the excavation or construction of the works in which it is intended to divert the water and the actual construction of any water power plant and reservoir or reservoirs for storage in connection therewith and shall vigorously, diligently, and uninterruptedly prosecute such work to completion unless temporarily interrupted by some unavoidable and natural cause. A failure to comply with this section shall work a forfeiture of the appropriation and all rights under the appropriation. The cost of promotion and engineering work shall not be considered a part of the cost of construction, and the progress of the construction work shall be such that one-tenth of the total work shall be completed within one year from the date of approval of the application. The construction of all work required in connection with the proposed project shall be prosecuted in the manner described in this section and with such a force as shall assure the average rate of constructional progress necessary to complete such work or works within the time stipulated in the approval of such application, notwithstanding the ordinary delays and casualties that must be expected and provided against. A failure to carry on the construction of either an irrigation project or a water power project as outlined in this section shall work a forfeiture of the appropriation and all rights under the appropriation, and the department shall cancel such appropriation. The department shall have free access to all records, books, and papers of any irrigation or water power company, shall have the right to go upon the right-of-way and land of any such company, shall inspect the work to see that it is being done according to plans and specifications approved by the department, and shall also keep a record of the cost of construction work when deemed advisable for physical valuation purposes.

(2) The department may extend, for reasonable lengths of time, the time for commencing excavation or construction, completion of works, the application of water to a beneficial use, or any of the other requirements for completing or perfecting an application for flow or storage rights as fixed in the approval of an application or otherwise for the appropriation of water. Such extension may be granted upon a petition to the department and the showing of reasonable cause. The department shall cause a notice of each petition received to be published at the petitioner's expense in at least one newspaper of general circulation in the county or counties of the appropriation once a week for three consecutive weeks. The department shall hold a hearing on the issue of extension on its own motion or if requested by any interested person. If a hearing is held, notice shall be given by certified mail to the applicant, to any person who requested a hearing, and to any person who requests notification of the hearing. The department may grant the extension in the absence of a hearing if no requests for a hearing are received. Any interested person may be made a party to such action. Any party affected by the decision on the petition may appeal directly to the Court of Appeals. Subsequent extensions may be made in the same manner.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 13, p. 838; C.S.1922, § 8432; C.S.1929, § 81-6313; R.S.1943, § 46-238; Laws 1957, c. 198, § 2, p. 698; Laws 1979, LB 545, § 1; Laws 1980, LB 649, § 1; Laws 1987, LB 140, § 8; Laws 1991, LB 278, § 1; Laws 1991, LB 732, § 107; Laws 2000, LB 900, § 113; Laws 2009, LB209, § 1.

46-241 Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.

(1) Every person intending to construct and operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and operate a facility for intentional underground water storage and recovery shall, except as provided in subsections (2) and (3) of this section and section 46-243, make an application to the department upon the prescribed form and provide such plans, drawings, and specifications as are necessary to comply with the Safety of Dams and Reservoirs Act. Such application shall be filed and proceedings had thereunder in the same manner and under the same rules and regulations as other applications. Upon the approval of such application under this section and any approval required by the act, the applicant shall have the right to construct and impound in such reservoir, or store in and recover from such underground water storage facility, all water not otherwise appropriated and any appropriated water not needed for immediate use, to construct and operate necessary ditches for the purpose of conducting water to such storage reservoir or facility, and to condemn land for such reservoir, ditches, or other facility. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir for any purpose other than for watering range livestock and (b) no release from the reservoir to provide water for a downstream diversion or withdrawal for any purpose other than for watering range livestock. This subsection does not exempt any person from the requirements of the Safety of Dams and Reservoirs Act or section 54-2425.

(3) Any person intending to construct a reservoir, holding pond, or lagoon for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section. This subsection does not exempt any person from any requirements of the Safety of Dams and Reservoirs Act or section 46-233 or 54-2425.

(4) Every person intending to modify or rehabilitate an existing storage reservoir so that its impounding capacity is to be increased shall comply with subsection (1) of this section.

(5) The owner of a storage reservoir or facility shall be liable for all damages arising from leakage or overflow of the water therefrom or from the breaking of the embankment of such reservoir. The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock in such amounts and at such times as directed by the department to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored.

Any dam shall be constructed in accordance with the Safety of Dams and Reservoirs Act, and the outlet works shall be installed so that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause. Whenever any person diverts water from a public stream and returns it into the same stream, he or she may take out the same amount of water, less a reasonable deduction for losses in transit, to be determined by the department, if no prior appropriator for beneficial use is prejudiced by such diversion.

(6) An application for storage and recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 17, p. 852; C.S.1922, § 8467; C.S.1929, § 46-617; R.S.1943, § 46-241; Laws 1951, c. 101, § 91, p. 487; Laws 1955, c. 183, § 2, p. 515; Laws 1971, LB 823, § 1; Laws 1973, LB 186, § 8; Laws 1983, LB 198, § 9; Laws 1985, LB 103, § 2; Laws 1985, LB 488, § 5; Laws 1995, LB 309, § 1; Laws 2000, LB 900, § 115; Laws 2003, LB 619, § 4; Laws 2004, LB 916, § 2; Laws 2004, LB 962, § 14; Laws 2005, LB 335, § 74.

Cross References

Safety of Dams and Reservoirs Act, see section 46-1601.

(g) IRRIGATION WORKS; CONSTRUCTION, OPERATION, AND REGULATION

46-257 Repealed. Laws 2005, LB 335, § 83.

46-277 Repealed. Laws 2005, LB 335, § 83.

46-278 Repealed. Laws 2005, LB 335, § 83.

(j) WATER REUSE PITS

46-283 Legislative findings.

The Legislature hereby finds and declares that the practice of reusing ground water from irrigation water reuse pits on irrigated land contributes to the efficient use and conservation of the state's water resources and that such reuse may be more feasible when done from irrigation water reuse pits located within ephemeral natural streams.

Source: Laws 1980, LB 908, § 1; Laws 2008, LB798, § 1.

46-286 Ephemeral natural stream, defined.

An ephemeral natural stream shall mean that portion of a natural stream in which water flows only after a precipitation event or when augmented by surface water runoff caused by the pumping of ground water for irrigation. The portion of a natural stream that is shown as an intermittent stream on the most recent United States Geological Survey topographic quadrangle map published prior to July 18, 2008, shall be considered an ephemeral natural stream unless the Department of Natural Resources has investigated the stream and determined that the stream or a reach of the stream is perennial or intermittent and

subject to Chapter 46, article 2. The department's determination for the purposes of this section shall be adopted and promulgated in rule or regulation.

Source: Laws 1980, LB 908, § 4; Laws 2006, LB 508, § 1; Laws 2008, LB798, § 2.

46-287 Irrigation water reuse pit; reusing ground water; exempt from certain provisions.

Notwithstanding any other provision of law, any person intending to or in the process of reusing ground water from an irrigation water reuse pit located within an ephemeral natural stream shall be exempt from the provisions of Chapter 46, article 2, which would otherwise apply to such pits, and from the provisions of section 46-637.

Source: Laws 1980, LB 908, § 5; Laws 2008, LB798, § 3.

(l) INTRABASIN TRANSFERS

46-290 Appropriation; application to transfer or change; contents; approval.

(1)(a) Except as provided in this section and sections 46-2,120 to 46-2,130, any person having a permit to appropriate water for beneficial purposes issued pursuant to sections 46-233 to 46-235, 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the use of such appropriation to a location other than the location specified in the permit, (ii) to change that appropriation to a different type of appropriation as provided in subsection (3) of this section, or (iii) to change the purpose for which the water is to be used under a natural-flow, storage, or storage-use appropriation to a purpose not at that time permitted under the appropriation shall apply for approval of such transfer or change to the Department of Natural Resources.

(b) The application for such approval shall contain (i) the number assigned to such appropriation by the department, (ii) the name and address of the present holder of the appropriation, (iii) if applicable, the name and address of the person or entity to whom the appropriation would be transferred or who will be the user of record after a change in the location of use, type of appropriation, or purpose of use under the appropriation, (iv) the legal description of the land to which the appropriation is now appurtenant, (v) the name and address of each holder of a mortgage, trust deed, or other equivalent consensual security interest against the tract or tracts of land to which the appropriation is now appurtenant, (vi) if applicable, the legal description of the land to which the appropriation is proposed to be transferred, (vii) if a transfer is proposed, whether other sources of water are available at the original location of use and whether any provisions have been made to prevent either use of a new source of water at the original location or increased use of water from any existing source at that location, (viii) if applicable, the legal descriptions of the beginning and end of the stream reach to which the appropriation is proposed to be transferred for the purpose of augmenting the flows in that stream reach, (ix) if a proposed transfer is for the purpose of increasing the quantity of water available for use pursuant to another appropriation, the number assigned to such other appropriation by the department, (x) the purpose of the current use, (xi) if a change in purpose of use is proposed, the proposed purpose of use, (xii) if a change in the type of appropriation is proposed, the type of appropriation to which a change is desired, (xiii) if a proposed transfer or change is to be

temporary in nature, the duration of the proposed transfer or change, and (xiv) such other information as the department by rule and regulation requires.

(2) If a proposed transfer or change is to be temporary in nature, a copy of the proposed agreement between the current appropriator and the person who is to be responsible for use of water under the appropriation while the transfer or change is in effect shall be submitted at the same time as the application.

(3) Regardless of whether a transfer or a change in the purpose of use is involved, the following changes in type of appropriation, if found by the Director of Natural Resources to be consistent with section 46-294, may be approved subject to the following:

(a) A natural-flow appropriation for direct out-of-stream use may be changed to a natural-flow appropriation for aboveground reservoir storage or for intentional underground water storage;

(b) A natural-flow appropriation for intentional underground water storage may be changed to a natural-flow appropriation for direct out-of-stream use or for aboveground reservoir storage;

(c) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an instream appropriation subject to sections 46-2,107 to 46-2,119 if the director determines that the resulting instream appropriation would be consistent with subdivisions (2), (3), and (4) of section 46-2,115;

(d) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an appropriation for induced ground water recharge if the director determines that the resulting appropriation for induced ground water recharge would be consistent with subdivisions (2)(a)(i) and (ii) of section 46-235; and

(e) The incidental underground water storage portion, whether or not previously quantified, of a natural-flow or storage-use appropriation may be separated from the direct-use portion of the appropriation and may be changed to a natural-flow or storage-use appropriation for intentional underground water storage at the same location if the historic consumptive use of the direct-use portion of the appropriation is transferred to another location or is terminated, but such a separation and change may be approved only if, after the separation and change, (i) the total permissible diversion under the appropriation will not increase, (ii) the projected consequences of the separation and change are consistent with the provisions of any integrated management plan adopted in accordance with section 46-718 or 46-719 for the geographic area involved, and (iii) if the location of the proposed intentional underground water storage is in a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713, the integrated management plan for that river basin, subbasin, or reach has gone into effect, and that plan requires that the amount of the intentionally stored water that is consumed after the change will be no greater than the amount of the incidentally stored water that was consumed prior to the change. Approval of a separation and change pursuant to this subdivision (e) shall not exempt any consumptive use associated with the incidental recharge right from any reduction in water use required by an integrated management plan for a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713.

Whenever any change in type of appropriation is approved pursuant to this subsection and as long as that change remains in effect, the appropriation shall

be subject to the statutes, rules, and regulations that apply to the type of appropriation to which the change has been made.

(4) The Legislature finds that induced ground water recharge appropriations issued pursuant to sections 46-233 and 46-235 and instream appropriations issued pursuant to section 46-2,115 are specific to the location identified in the appropriation. Neither type of appropriation shall be transferred to a different location, changed to a different type of appropriation, or changed to permit a different purpose of use.

(5) In addition to any other purposes for which transfers and changes may be approved, such transfers and changes may be approved if the purpose is (a) to augment the flow in a specific stream reach for any instream use that the department has determined, through rules and regulations, to be a beneficial use or (b) to increase the frequency that a diversion rate or rate of flow specified in another valid appropriation is achieved.

For any transfer or change approved pursuant to subdivision (a) of this subsection, the department shall be provided with a report at least every five years while such transfer or change is in effect. The purpose of such report shall be to indicate whether the beneficial instream use for which the flow is augmented continues to exist. If the report indicates that it does not or if no report is filed within sixty days after the department's notice to the appropriator that the deadline for filing the report has passed, the department may cancel its approval of the transfer or change and such appropriation shall revert to the same location of use, type of appropriation, and purpose of use as prior to such approval.

(6) A quantified or unquantified appropriation for incidental underground water storage may be transferred to a new location along with the direct-use appropriation with which it is recognized if the director finds such transfer to be consistent with section 46-294 and determines that the geologic and other relevant conditions at the new location are such that incidental underground water storage will occur at the new location. The director may request such information from the applicant as is needed to make such determination and may modify any such quantified appropriation for incidental underground water storage, if necessary, to reflect the geologic and other conditions at the new location.

(7) Unless an incidental underground water storage appropriation is changed as authorized by subdivision (3)(e) of this section or is transferred as authorized by subsection (6) of this section or subsection (1) of section 46-291, such appropriation shall be canceled or modified, as appropriate, by the director to reflect any reduction in water that will be stored underground as the result of a transfer or change of the direct-use appropriation with which the incidental underground water storage was recognized prior to the transfer or change.

Source: Laws 1983, LB 21, § 2; Laws 1995, LB 99, § 17; Laws 2000, LB 900, § 131; Laws 2004, LB 962, § 16; Laws 2006, LB 1226, § 10; Laws 2009, LB477, § 1.

46-291 Application; review; notice; contents; comments.

(1) Upon receipt of an application filed under section 46-290 for a transfer in the location of use of an appropriation, the Department of Natural Resources shall review it for compliance with this subsection. The Director of Natural Resources may approve the application without notice or hearing if he or she

determines that: (a) The appropriation is used and will continue to be used exclusively for irrigation purposes; (b) the only lands involved in the proposed transfer are (i) lands within the quarter section of land to which the appropriation is appurtenant, (ii) lands within such quarter section of land and one or more quarter sections of land each of which is contiguous to the quarter section of land to which the appropriation is appurtenant, or (iii) lands within the boundaries or service area of and capable of service by the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (c) after the transfer, the total number of acres irrigated under the appropriation will be no greater than the number of acres that could legally be irrigated under the appropriation prior to the transfer; (d) all the land involved in the transfer is under the same ownership or is within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (e) the transfer will not result in a change in the point of diversion or the point of diversion will be changed but the change meets the following requirements: (i) The new point of diversion is on the same named stream, the same tributary, or the same river or creek as the approved point of diversion; (ii) the proposed point of diversion will not move above or below an existing diversion point owned by another appropriator; and (iii) the proposed point of diversion will not move above or below a tributary stream or a constructed river return or a constructed drain; and (f) the transfer will not diminish the water supply available for or otherwise adversely affect any other surface water appropriator. If transfer of an appropriation with associated incidental underground water storage is approved in accordance with this subsection, the associated incidental underground water storage also may be transferred pursuant to this subsection as long as such transfer would continue to be consistent with the requirements of this subsection. If necessary, the boundaries of the incidental underground water storage area may be modified to reflect any change in the location of that storage consistent with such a transfer. Transfers shall not be approved pursuant to this subsection until the department has adopted and promulgated rules and regulations establishing the criteria it will use to determine whether proposed transfers are consistent with subdivision (1)(f) of this section.

(2) If after reviewing an application filed under section 46-290 the director determines that it cannot be approved pursuant to subsection (1) of this section, he or she shall cause a notice of such application to be posted on the department's web site, to be sent by certified mail to each holder of a mortgage, trust deed, or other equivalent consensual security interest that is identified by the applicant pursuant to subdivision (1)(b)(v) of section 46-290 and to any entity owning facilities currently used or proposed to be used for purposes of diversion or delivery of water under the appropriation, and to be published at the applicant's expense at least once each week for three consecutive weeks in at least one newspaper of general circulation in each county containing lands to which the appropriation is appurtenant and, if applicable, in at least one newspaper of general circulation in each county containing lands to which the appropriation is proposed to be transferred.

(3) The notice shall contain: (a) A description of the appropriation; (b) the number assigned to such appropriation in the records of the department; (c) the date of priority; (d) if applicable, a description of the land or stream reach to which such water appropriation is proposed to be transferred; (e) if applicable, the type of appropriation to which the appropriation is proposed to be changed;

(f) if applicable, the proposed change in the purpose of use; (g) whether the proposed transfer or change is to be permanent or temporary and, if temporary, the duration of the proposed transfer or change; and (h) any other information the director deems relevant and essential to provide the interested public with adequate notice of the proposed transfer or change.

(4) The notice shall state (a) that any interested person may object to and request a hearing on the application by filing such objections in writing specifically stating the grounds for each objection and (b) that any such objection and request shall be filed in the office of the department within two weeks after the date of final publication of the notice.

(5) Within the time period allowed by this section for the filing of objections and requests for hearings, the county board of any county containing land to which the appropriation is appurtenant and, if applicable, the county board of any county containing land to which the appropriation is proposed to be transferred may provide the department with comments about the potential economic impacts of the proposed transfer or change in such county. The filing of any such comments by a county board shall not make the county a party in the application process, but such comments shall be considered by the director in determining pursuant to section 46-294 whether the proposed transfer or change is in the public interest.

Source: Laws 1983, LB 21, § 3; Laws 2000, LB 900, § 132; Laws 2004, LB 962, § 17; Laws 2006, LB 1226, § 11; Laws 2008, LB798, § 4; Laws 2009, LB477, § 2.

46-294.01 Appropriation; temporary transfer; filings required.

Whenever a temporary transfer is approved in accordance with sections 46-290 to 46-294, the applicant shall, within sixty days after the order of approval of the Department of Natural Resources, cause copies of the following to be filed with the county clerk or register of deeds of the county in which the land subject to the appropriation prior to the transfer is located: (1) The permit by which the appropriation was established; (2) the agreement by which the temporary transfer is to be effected; and (3) the order of the Director of Natural Resources approving the temporary transfer. Whenever renewal of a temporary transfer is approved pursuant to section 46-294.02, the applicant shall, within sixty days after such approval, cause a copy of the order of the director approving such renewal to be filed with the county clerk or register of deeds of such county. Such documents shall be indexed to the land subject to the appropriation prior to the transfer. The applicant shall file with the department, within ninety days after the department's order of approval, proof of filing with the county clerk or register of deeds. Failure to file such proof of filing within such ninety-day time period shall be grounds for the director to negate any prior approval of the transfer or renewal.

Source: Laws 2004, LB 962, § 21; Laws 2006, LB 1226, § 12.

(m) UNDERGROUND WATER STORAGE

46-299 Permittee; authorized to levy a fee or assessment; limitation.

Any person who has obtained a permit for intentional underground water storage and recovery of such water pursuant to section 46-233, 46-240, 46-241, 46-242, or 46-297 may, subject to section 46-2,101, levy a fee or assessment

against any person for the right or probable right to withdraw or otherwise use such stored water. Such fee or assessment may be levied against any land in connection with which such underground water storage has occurred or probably will occur, and may be varied based on the degree to which underground water storage has occurred or will occur. No fee or assessment shall represent more than the fair market value of such recharge, except that a fee or assessment may include a sum sufficient to amortize the operation, maintenance, repair, and capital costs of the project, apportioned on the degree to which recharge has occurred or is likely to occur, and on the degree to which any surface water is delivered.

Source: Laws 1983, LB 198, § 13; Laws 2008, LB798, § 5.

(n) INSTREAM APPROPRIATIONS

46-2,112 Permit to appropriate water for instream flows; hearing; when; notice; director; powers.

A permit to appropriate water for instream flows shall be subject to review every fifteen years after it is granted. Notice of a pending review shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not later than fourteen years and ten months after the permit was granted or after the date of the director's action following the last such review, whichever is later, and such notice shall be mailed to the appropriator of record and posted on the department's web site. The notice shall state that any interested person may file comments relating to the review of the instream appropriation or may request a hearing to present evidence relevant to such review. Any such comments or request for hearing shall be filed in the headquarters office of the department within six weeks after the date of final publication of the notice. The appropriator of record shall, within the six-week period, file written documentation of the continued use of the appropriation. If no requests for hearing are received and if the director is satisfied with the information provided by the appropriator of record that the appropriation continues to be beneficially used and is in the public interest, the director shall issue an order stating such findings. If requested by any interested person, or on his or her own motion based on the comments and information filed, the director shall schedule a hearing. If a hearing is held, the purpose of the hearing shall be to receive evidence regarding whether the water appropriated under the permit still provides the beneficial uses for which the permit was granted and whether the permit is still in the public interest. The hearing shall proceed under the rebuttable presumption that the appropriation continues to provide the beneficial uses for which the permit was granted and that the appropriation is in the public interest. After the hearing, the director may by order modify or cancel, in whole or in part, the instream appropriation.

Source: Laws 1997, LB 877, § 2; Laws 2000, LB 900, § 144; Laws 2004, LB 962, § 28; Laws 2006, LB 1226, § 13.

(p) WATER POLICY TASK FORCE

46-2,136 Duties.

The Water Policy Task Force shall discuss the issues described in section 46-2,131 and such related issues as it deems appropriate, shall identify options

for resolution of such issues, and shall make recommendations to the Legislature and the Governor relating to any water policy changes the task force deems desirable so long as the task force is authorized by the Legislature.

Source: Laws 2002, LB 1003, § 6; Laws 2006, LB 1226, § 14.
Termination date December 31, 2009.

46-2,137 Water Policy Task Force Cash Fund; created; use; investment.

The Water Policy Task Force Cash Fund is created. The fund shall be administered by the Department of Natural Resources and expended at the direction of the Water Policy Task Force. The fund shall consist of funds appropriated by the Legislature, money received as gifts, grants, and donations, and transfers authorized under sections 2-1579 and 66-1519. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

On April 6, 2010, the State Treasurer shall: (1) Transfer fifty thousand dollars from the Water Policy Task Force Cash Fund to the Republican River Basin Water Sustainability Task Force Cash Fund; and (2) transfer the remaining unexpended balance in the Water Policy Task Force Cash Fund to the Water Resources Trust Fund.

Source: Laws 2002, LB 1003, § 7; Laws 2010, LB1057, § 3.
Effective date April 6, 2010.

Note: This section had a termination date of December 31, 2009. It was subsequently amended by Laws 2010, LB1057, § 3.

Cross References

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

(q) STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139 Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; duties.

The Storm Water Management Plan Program is created. The purpose of the program is to facilitate and fund the duties of cities and counties under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements. The Storm Water Management Plan Program shall function as a grant program administered by the Department of Environmental Quality, using funds appropriated for the program. The department shall deduct from funds appropriated amounts sufficient to reimburse itself for its costs of administration of the grant program. Any city or county when applying for a grant under the program shall have a storm water management plan approved by the department which meets the requirements of the National Pollutant Discharge Elimination System. Grant applications shall be made to the department on forms prescribed by the department. Grant funds shall be distributed by the department as follows:

(1) Not less than eighty percent of the funds available for grants under this section shall be provided to cities and counties in urbanized areas, as identified in 64 Federal Register 68822, that apply for grants and meet the requirements of this section. Grants made pursuant to this subdivision shall be distributed proportionately based on the population of applicants within such category, as

determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants under this subdivision and not awarded by the end of a calendar year shall be available for grants in the following year; and

(2) Not more than twenty percent of the funds available for grants under this section shall be provided to cities and counties outside of urbanized areas, as identified in 64 Federal Register 68822, with populations greater than ten thousand inhabitants as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census, that apply for grants and meet the requirements of this section. Grants under this subdivision shall be distributed proportionately based on the population of applicants within this category as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants pursuant to this subdivision which have not been awarded at the end of each calendar year shall be available for awarding grants pursuant to subdivision (1) of this section.

Any city or county receiving a grant under subdivision (1) or (2) of this section shall contribute matching funds equal to twenty percent of the grant amount.

Source: Laws 2006, LB 1226, § 6; Laws 2007, LB530, § 1.

(r) REPUBLICAN RIVER BASIN WATER SUSTAINABILITY TASK FORCE

46-2,140 Republican River Basin Water Sustainability Task Force; created; members; meetings; duties; report.

(1) The Republican River Basin Water Sustainability Task Force is created. The task force shall consist of twenty-two voting members, and except for the state agency representatives, the members shall be residents representing a cross-section of the Republican River basin. The Governor shall appoint two representatives from each natural resources district in the basin; four representatives from the irrigation districts in the basin; one representative each from the University of Nebraska Institute of Agriculture and Natural Resources, the Game and Parks Commission, the Department of Agriculture, and the Department of Natural Resources; one representative each from a school district, a city, a county, and a public power district in the basin; and two representatives from agriculture-related businesses in the Republican River basin. The chairperson of the Executive Board of the Legislative Council shall appoint four ex officio, nonvoting members from the Legislature, two of whom are residents of the basin, one who has a portion of his or her legislative district in the basin, and one who is the chairperson of the Natural Resources Committee of the Legislature. For administrative and budgetary purposes only, the task force shall be housed within the Department of Natural Resources. Additional advisory support may be requested from appropriate federal and state agencies. Members of the task force who are not state employees shall be reimbursed for

their actual and necessary expenses incurred in carrying out their duties as members as provided in sections 81-1174 to 81-1177.

(2) The task force shall meet no less than quarterly and shall hire a trained facilitator to conduct its meetings. The purposes of the task force are to define water sustainability for the Republican River basin, develop and recommend a plan to help reach water sustainability in the basin, and develop and recommend a plan to help avoid a water-short year in the basin. The task force shall convene within thirty days after appointment of the members is completed to elect a chairperson and conduct such other business as deemed necessary.

(3) The task force shall present a preliminary report to the Governor and the Legislature on or before May 15, 2011, and a final report before May 15, 2012. This section terminates on June 30, 2012.

Source: Laws 2010, LB1057, § 1.
Effective date April 6, 2010.
Termination date June 30, 2012.

46-2,141 Republican River Basin Water Sustainability Task Force Cash Fund; created; use; investment.

The Republican River Basin Water Sustainability Task Force Cash Fund is created. The fund shall be administered by the Department of Natural Resources and expended at the direction of the Republican River Basin Water Sustainability Task Force. The fund shall consist of funds appropriated by the Legislature, money received as gifts, grants, and donations, and transfers authorized under section 46-2,137. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2010, LB1057, § 2.
Effective date April 6, 2010.

Cross References

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

ARTICLE 6

GROUND WATER

(a) REGISTRATION OF WATER WELLS

Section
46-601.01. Terms, defined.
46-602. Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required.
46-602.01. Water well in management area; duties; prohibited acts; penalty.
46-604. Registration form; copies; disposition.
46-609. Irrigation water wells; spacing; requirements; exceptions; new use of well; registration modification; approval.

(d) MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT

46-644. Permits; duration; revocation; procedure.

(e) SPACING OF WATER WELLS

46-655.01. Public water supplier; notice of intent to consider wellfield; contents; effect; termination.

Section

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

(h) TRANSFERS

(a) REGISTRATION OF WATER WELLS

46-601.01 Terms, defined.

For purposes of Chapter 46, article 6:

(1)(a) Water well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in section 81-1502 into the underground water reservoir.

(b) Water well includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation.

(c) Water well does not include (i) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or (ii) any structure requiring a permit by the Department of Natural Resources used to exercise surface water appropriation; and

(2) Common carrier means any carrier of water including a pipe, canal, ditch, or other means of piping or adjoining water for irrigation purposes.

Source: Laws 1993, LB 131, § 2; Laws 1999, LB 92, § 1; Laws 2004, LB 962, § 34; Laws 2007, LB701, § 17.

Cross References

For additional definitions, see section 46-656.07.

46-602 Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required.

(1) Each water well completed in this state on or after July 1, 2001, excluding test holes and dewatering wells to be used for less than ninety days, shall be registered with the Department of Natural Resources as provided in this section within sixty days after completion of construction of the water well. The licensed water well contractor as defined in section 46-1213 constructing the water well, or the owner of the water well if the owner constructed the water well, shall file the registration on a form made available by the department and shall also file with the department the information from the well log required

pursuant to section 46-1241. The department shall, by January 1, 2002, provide licensed water well contractors with the option of filing such registration forms electronically. No signature shall be required on forms filed electronically. The fee required by subsection (3) of section 46-1224 shall be the source of funds for any required fee to a contractor which provides the on-line services for such registration. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to section 46-1224.

(2)(a) If the newly constructed water well is a replacement water well, the registration form shall include (i) the registration number of the water well being replaced, if applicable, and (ii) the date the original water well was decommissioned or a certification that the water well will be decommissioned within one hundred eighty days or a certification that the original water well will be modified and equipped to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive use or de minimis use approved by the applicable natural resources district.

(b) For purposes of this section, replacement water well means a water well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable permit from the department and any applicable rules and regulations of the natural resources district and, if the purpose is for irrigation, the replacement water well delivers water to the same tract of land served by the original water well and (i) replaces a decommissioned water well within one hundred eighty days after the decommissioning of the original water well, (ii) replaces a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty days after such construction, except that in the case of a municipal water well, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one year after completion of the replacement water well, or (iii) the original water well will continue to be used but will be modified and equipped within one hundred eighty days after such construction of the replacement water well to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district.

(c) No water well shall be registered as a replacement water well until the Department of Natural Resources has received a properly completed notice of decommissioning for the water well being replaced on a form made available by the department, or properly completed notice, prepared in accordance with subsection (7) of this section, of the modification and equipping of the original water well to pump fifty gallons per minute or less for use only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. Such notices, as required, shall be completed by (i) the licensed water well contractor as defined in section 46-1213 who decommissions the water well or modifies and equips the water well, (ii) the licensed pump installation contractor as defined in section 46-1209 who decommissions the water well or modifies and equips the water well, or (iii) the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural

purposes or as his or her place of abode. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection.

(3) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, a registration form and a detailed site plan shall be filed for each water well. The registration form shall include the registration numbers of other water wells included in the series if such water wells are already registered.

(4) A series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground shall be considered as one water well. One registration form and a detailed site plan shall be filed for each such series.

(5) One registration form shall be required along with a detailed site plan which shows the location of each such water well in the site and a log from each such water well for water wells constructed as part of a single site plan for (a) monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, (b) water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, and (c) water well owners who have a permit issued pursuant to the Industrial Ground Water Regulatory Act and also have an underground injection control permit issued by the Department of Environmental Quality.

(6) The Department of Natural Resources shall be notified by the owner of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and include such evidence of ownership as the Director of Natural Resources by rule and regulation directs. The department shall use such notice to update the registration on file. The department shall not collect a fee for the filing of the notice.

(7) The licensed water well contractor or licensed pump installation contractor responsible therefor shall notify the department within sixty days on a form provided by the department of any pump installation or any modifications to the construction of the water well or pump, after the initial registration of the well. For a change of use resulting in modification and equipping of an original water well which is being replaced in accordance with subsection (2) of this section, the licensed water well contractor or licensed pump installation contractor shall notify the department within sixty days on a form provided by the department of the water well and pump modifications and equipping of the original water well. A water well owner shall notify the department within sixty days on a form provided by the department of any other changes or any inaccuracies in recorded water well information, including, but not limited to, changes in use. The department shall not collect a fee for the filing of the notice.

(8) Whenever a water well becomes an illegal water well as defined in section 46-706, the owner of the water well shall either correct the deficiency that causes the well to be an illegal water well or shall cause the proper decommissioning of the water well in accordance with rules and regulations adopted pursuant to the Water Well Standards and Contractors' Practice Act. The licensed water well contractor who decommissions the water well, the licensed pump installation contractor who decommissions the water well, or the owner

if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode, shall provide a properly completed notice of decommissioning to the Department of Natural Resources within sixty days. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection. The Department of Natural Resources shall not collect a fee for the filing of the notice.

(9) Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources. Such registration shall be completed by a licensed water well contractor or by the current owner of the water well, shall be on forms provided by the department, and shall provide as much of the information required by subsections (1) through (5) of this section for registration of a new water well as is possible at the time of registration.

(10) Water wells which are or were used solely for injecting any fluid other than water into the underground water reservoir, which were constructed before July 16, 2004, and which have not been properly decommissioned on or before July 16, 2004, shall be registered on or before July 1, 2005.

(11) Water wells described in subdivision (1)(b) of section 46-601.01 shall be registered with the Department of Natural Resources as provided in subsection (1) of this section within sixty days after the water well is constructed. Water wells described in subdivision (1)(b) of section 46-601.01 which were constructed prior to May 2, 2007, shall be registered within one hundred eighty days after such date.

Source: Laws 1957, c. 200, § 2, p. 702; Laws 1961, c. 230, § 1, p. 683; Laws 1967, c. 281, § 2, p. 760; Laws 1975, LB 577, § 20; Laws 1979, LB 204, § 2; Laws 1980, LB 643, § 1; Laws 1981, LB 246, § 1; Laws 1983, LB 23, § 1; Laws 1986, LB 886, § 1; Laws 1986, LB 310, § 42; Laws 1993, LB 131, § 3; Laws 1994, LB 981, § 6; Laws 1995, LB 145, § 1; Laws 1995, LB 871, § 3; Laws 1997, LB 30, § 2; Laws 1999, LB 92, § 2; Laws 2000, LB 900, § 170; Laws 2001, LB 667, § 3; Laws 2002, LB 458, § 2; Laws 2003, LB 242, § 5; Laws 2003, LB 245, § 6; Laws 2004, LB 962, § 35; Laws 2006, LB 508, § 2; Laws 2006, LB 1226, § 15; Laws 2007, LB296, § 202; Laws 2007, LB463, § 1140; Laws 2007, LB701, § 18.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.
Old wells not in use, duty to fill, see sections 54-311 and 54-315.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

46-602.01 Water well in management area; duties; prohibited acts; penalty.

Prior to commencing construction of or installation of a pump in a water well in a management area or completing a notice of modification and change of use in lieu of decommissioning of a water well as part of a water well

replacement procedure, a licensed water well contractor as defined in section 46-1213 or a licensed pump installation contractor as defined in section 46-1209 shall take those steps necessary to satisfy himself or herself that the person for whom the well is to be constructed, the modification and change of use is to be completed, or the pump installed has obtained a permit as required by the Nebraska Ground Water Management and Protection Act. The permit issued by the natural resources district as required by the act may (1) further define a replacement water well in accordance with the act so long as any further definition is not inconsistent with section 46-602, (2) impose restrictions on consumptive use, or (3) impose additional restrictions based on historic consumptive use.

Any person who commences or causes construction of or installation of a pump in a water well for which the required permit has not been obtained or who knowingly furnishes false information regarding such permit shall be guilty of an offense punishable as provided in section 46-613.02.

Source: Laws 1981, LB 325, § 3; Laws 1993, LB 131, § 4; Laws 2001, LB 667, § 4; Laws 2006, LB 508, § 3; Laws 2007, LB463, § 1141.

Cross References

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

46-604 Registration form; copies; disposition.

The Director of Natural Resources shall retain the registration form required by section 46-602 and shall make a copy available to the natural resources district within which the water well is located, to the owner of the water well, and to the licensed water well contractor as defined in section 46-1213.

Source: Laws 1957, c. 200, § 4, p. 703; Laws 1961, c. 227, § 4, p. 673; Laws 1961, c. 230, § 3, p. 685; Laws 1986, LB 886, § 3; Laws 1993, LB 131, § 5; Laws 2000, LB 900, § 171; Laws 2001, LB 667, § 5; Laws 2007, LB463, § 1142.

46-609 Irrigation water wells; spacing; requirements; exceptions; new use of well; registration modification; approval.

(1) Except as otherwise provided by this section or section 46-610, no irrigation water well shall be constructed upon any land in this state within six hundred feet of any registered irrigation water well and no existing nonirrigation water well within six hundred feet of any registered irrigation water well shall be used for irrigation purposes. Such spacing requirement shall not apply to (a) any water well used to irrigate two acres or less or (b) any replacement irrigation water well if it is constructed within fifty feet of the irrigation water well being replaced and if the water well being replaced was constructed prior to September 20, 1957, and is less than six hundred feet from a registered irrigation water well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of sixty days after completion of such water well.

(3) No person shall use a water well for purposes other than its registered purpose until the water well registration has been changed to the intended new use, except that a person may use a water well registered for purposes other than its intended purpose for use for livestock, monitoring, observation, or any

other nonconsumptive or de minimis use approved by the applicable natural resources district. The change to a new use shall be made by filing a water well registration modification with the Department of Natural Resources and shall be approved only if the water well is in conformity with subsection (1) of this section and with section 46-651.

Source: Laws 1957, c. 201, § 2, p. 705; Laws 1972, LB 1238, § 1; Laws 1981, LB 146, § 3; Laws 1993, LB 131, § 8; Laws 2004, LB 962, § 36; Laws 2007, LB701, § 19.

(d) MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT

46-644 Permits; duration; revocation; procedure.

Permits granted by the Director of Natural Resources shall be valid for a period of five years after the granting of a permit and as long thereafter as the water for which the permit is granted is used. For the purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the commencement of construction of facilities to provide water for beneficial use shall be deemed the date of the commencement of beneficial use. If it appears that the holder of a permit granted under the act has not used water for a beneficial purpose and in accordance with the terms of the permit for more than five years, such permit may be revoked or modified by the director. The procedure for such revocation or modification shall be the same as that provided for in sections 46-229.02 to 46-229.05.

Source: Laws 1963, c. 276, § 7, p. 831; Laws 2000, LB 900, § 182; Laws 2007, LB701, § 20.

(e) SPACING OF WATER WELLS

46-655.01 Public water supplier; notice of intent to consider wellfield; contents; effect; termination.

(1) A public water supplier as defined in section 46-638 may obtain protection for a public water supply wellfield from encroachment from other water wells by filing with the Department of Natural Resources a notice of intent to consider a wellfield. The notice of intent shall include:

(a) The legal description of the land being considered as a public water supply wellfield; and

(b) Written consent of the owner of the land considered for a public water supply wellfield, allowing the public water supplier to conduct an evaluation as to whether such land is suitable for a public water supply wellfield.

(2) A notice of intent filed under this section shall be limited to a contiguous tract of land. No public water supplier shall have more than three notices of intent under this section on file with the department at any one time.

(3) A notice of intent filed under this section shall expire one year after the date of filing and may be renewed for one additional year by filing with the department a notice of renewal of the original notice of intent filed under this section before expiration of the original notice of intent.

(4) At the time a notice of intent or a notice of renewal is filed with the department, the public water supplier shall:

(a) Provide a copy of the notice of intent or notice of renewal to the owners of land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice;

(b) Provide a copy of the notice to the natural resources district or districts within which the land being considered for a wellfield is located; and

(c) Publish a copy of the notice in a newspaper of general circulation in the area in which the wellfield is being considered.

(5)(a) Except as provided in subdivisions (b) and (c) of this subsection, during the time that a notice of intent under this section is in effect, no person may drill or construct a water well, as defined in section 46-601.01, within the following number of feet of the boundaries of the land described in the notice of intent, whichever is greater:

(i) One thousand feet; or

(ii) The maximum number of feet specified in any applicable regulations of a natural resources district that a well of a public water supplier must be spaced from another well.

(b) Any person who, at least one hundred eighty days prior to filing a notice of intent, obtained a valid permit from a natural resources district to drill or construct a water well within the area subject to the protection provided by this section is not prohibited from drilling or constructing a water well.

(c) The public water supplier may waive the protection provided by this section and allow a person to drill or construct a new or replacement water well within the area subject to the protection provided by this section.

(6) Within thirty days after the public water supplier reaches a determination that the land described in a particular notice of intent is not suitable for a public water supply wellfield, the public water supplier shall notify the Department of Natural Resources, all affected natural resources districts, the owner of the land described in the notice of intent, and the owners of all land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice of intent of such determination. Upon receipt by the department of the notice of such determination, the notice of intent that contains the description of such tract of land shall terminate immediately, notwithstanding any other provision of this section.

Source: Laws 2004, LB 962, § 40; Laws 2006, LB 1226, § 16.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-676.01 Applicability of act.

The Industrial Ground Water Regulatory Act does not apply to any public water supplier providing, or intending to provide, ground water for industrial purposes nor does the act apply to any person who is using, or intends to use, ground water for industrial purposes that is supplied by a public water supplier.

Source: Laws 2005, LB 335, § 75.

46-677 Withdrawal of ground water for industrial purposes; permit required; when.

(1) Except as provided in sections 46-676.01 and 46-678.01:

(a) Any person who desires to withdraw and transfer ground water from aquifers located within the State of Nebraska for industrial purposes shall, prior to commencing construction of any water wells, obtain from the director a permit to authorize such withdrawal and transfer of such ground water; and

(b) Any person who prior to April 23, 1993, has withdrawn ground water from aquifers located in the State of Nebraska for industrial purposes may file an application for a permit to authorize the transfer of such ground water at any time.

(2) For purposes of this section, industrial purposes includes manufacturing, commercial, and power generation uses of water and commercial use includes, but is not limited to, maintenance of the turf of a golf course.

Source: Laws 1981, LB 56, § 3; Laws 1993, LB 131, § 34; Laws 1993, LB 789, § 6; Laws 2002, LB 458, § 5; Laws 2005, LB 335, § 76.

46-683 Permit; issuance; consideration; conditions.

(1) The director shall issue a written order containing specific findings of fact either granting or denying a permit. The director shall grant a permit only if he or she finds that the applicant's withdrawal and any transfer of ground water are in the public interest. In determining whether the withdrawal and transfer, if any, are in the public interest, the director's considerations shall include, but not be limited to:

(a) Possible adverse effects on existing surface or ground water users;

(b) The effect of the withdrawal and any transfer of ground water on surface or ground water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed ground water withdrawal;

(c) The availability of alternative sources of surface or ground water reasonably accessible to the applicant in or near the region of the proposed withdrawal or use;

(d) The economic benefit of the applicant's proposed use;

(e) The social and economic benefits of existing uses of surface or ground water in the area of the applicant's proposed use and any transfer;

(f) Any waivers of liability from existing users filed with the director;

(g) The effects on interstate compacts or decrees and the fulfillment of the provisions of any other state contract or agreement; and

(h) Other factors reasonably affecting the equity of granting the permit.

(2) The director may grant a permit for less water than requested by the applicant. The director may also impose reasonable conditions on the manner and timing of the ground water withdrawals and on the manner of any transfer of ground water which the director deems necessary to protect existing users of water. If a hearing is held, the director shall issue such written order within ninety days of the hearing.

Source: Laws 1981, LB 56, § 9; Laws 2003, LB 619, § 13; Laws 2006, LB 1226, § 17.

46-686 Injured person; remedies available.

Any owner of an estate or interest in or concerning land or water, except a person who has signed an agreement filed with the director pursuant to section 46-682, may bring an action for damages or injunctive or other relief for any

injury done to his or her land or water rights by the holder of a permit issued pursuant to section 46-683. Nothing in the Industrial Ground Water Regulatory Act shall be construed as limiting the right to resort to other means of review, redress, or relief provided by law.

Source: Laws 1981, LB 56, § 12; Laws 2005, LB 335, § 77.

46-688 Director; rules and regulations.

The director may adopt and promulgate all rules and regulations necessary or desirable to secure compliance with the Industrial Ground Water Regulatory Act. The director shall by regulation specify the contents and scope of the hydrologic evaluation required by section 46-678, taking into account the current state of hydrologic knowledge and techniques, and the factors for permit approval listed in section 46-683.

Source: Laws 1981, LB 56, § 14; Laws 2005, LB 335, § 78.

46-690 Act, how cited.

Sections 46-675 to 46-690 shall be known and may be cited as the Industrial Ground Water Regulatory Act.

Source: Laws 1981, LB 56, § 16; Laws 1986, LB 309, § 6; Laws 1993, LB 789, § 10; Laws 2005, LB 335, § 79.

(h) TRANSFERS

46-691.03 Transfer off overlying land for environmental or recreational benefits; when allowed; application; fee; natural resources district; powers and duties.

(1) Any person intending to withdraw ground water from any water well located in the State of Nebraska, transport that water off the overlying land, and use it to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or producing other environmental or recreational benefits may do so only if the natural resources district in which the water well is or would be located allows withdrawals and transport for such purposes and only after applying for and obtaining a permit from such natural resources district. An application for any such permit shall be accompanied by a nonrefundable fee of fifty dollars payable to such district. Such permit shall be in addition to any permit required pursuant to section 46-252 or 46-735 or subdivision (1)(k) of section 46-739.

(2) Prior to taking action on an application pursuant to this section, the district shall provide an opportunity for public comment on such application at a regular or special board meeting for which advance published notice of the meeting and the agenda therefor have been given consistent with the Open Meetings Act.

(3) In determining whether to grant a permit under this section, the board of directors for the natural resources district shall consider:

(a) Whether the proposed use is a beneficial use of ground water;

(b) The availability to the applicant of alternative sources of surface water or ground water for the proposed withdrawal, transport, and use;

(c) Any negative effect of the proposed withdrawal, transport, and use on ground water supplies needed to meet present or reasonable future demands

for water in the area of the proposed withdrawal, transport, and use, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(d) Any negative effect of the proposed withdrawal, transport, and use on surface water supplies needed to meet present or reasonable future demands for water within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(e) Any adverse environmental effect of the proposed withdrawal, transport, and use of the ground water;

(f) The cumulative effects of the proposed withdrawal, transport, and use relative to the matters listed in subdivisions (3)(c) through (e) of this section when considered in conjunction with all other withdrawals, transports, and uses subject to this section;

(g) Whether the proposed withdrawal, transport, and use is consistent with the district's ground water quantity and quality management plan and with any integrated management plan previously adopted or being considered for adoption in accordance with sections 46-713 to 46-719; and

(h) Any other factors consistent with the purposes of this section which the board of directors deems relevant to protect the interests of the state and its citizens.

(4) Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn and, if the location where the water is to be used to produce the intended benefits is in a different natural resources district, with the rules and regulations of that natural resources district. The board of directors may include such reasonable conditions on the proposed withdrawal, transport, and use as it deems necessary to carry out the purposes of this section.

(5) The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of any district where the water is to be withdrawn or to be used.

Source: Laws 2004, LB 962, § 97; Laws 2006, LB 1226, § 18.

Cross References

Open Meetings Act, see section 84-1407.

ARTICLE 7

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

Section

Section

46-701 Act, how cited.

Sections 46-701 to 46-754 shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Source: Laws 1975, LB 577, § 24; Laws 1981, LB 146, § 12; Laws 1982, LB 375, § 22; Laws 1984, LB 1071, § 15; Laws 1986, LB 894, § 31; Laws 1991, LB 51, § 8; Laws 1994, LB 480, § 27; R.S.Supp.,1994, § 46-674; Laws 1996, LB 108, § 7; Laws 2003, LB 619, § 9; R.S.Supp.,2003, § 46-656.01; Laws 2004, LB 962, § 41; Laws 2006, LB 1226, § 19; Laws 2009, LB477, § 3.

46-702 Declaration of intent and purpose; legislative findings.

The Legislature finds that ownership of water is held by the state for the benefit of its citizens, that ground water is one of the most valuable natural resources in the state, and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals. The Legislature also finds that natural resources districts have the legal authority to regulate certain activities and, except as otherwise specifically provided by statute, as local entities are the preferred regulators of activities which may contribute to ground water depletion.

Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the Nebraska Ground Water Management and Protection Act and the correlative rights of other landowners when the ground water supply is insufficient to meet the reasonable needs of all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with reasonable and beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, and conservation of ground water and the reasonable and beneficial use

thereof are essential to the economic prosperity and future well-being of the state and that the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the contamination or inefficient or improper use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally and regionally determined ground water management objectives and where available data, evidence, or other information indicates that present or potential ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

The Legislature finds that given the impact of extended drought on areas of the state, the economic prosperity and future well-being of the state is advanced by providing economic assistance in the form of providing bonding authority for certain natural resources districts as defined in section 2-3226.01 and in the creation of the Water Resources Cash Fund to alleviate the adverse economic impact of regulatory decisions necessary for management, protection, and conservation of limited water resources. The Legislature specifically finds that, consistent with the public ownership of water held by the state for the benefit of its citizens, any action by the Legislature, or through authority conferred by it to any agency or political subdivision, to provide economic assistance does not establish any precedent that the Legislature in sections 2-3226.01 and 61-218 or in the future must or should purchase water or provide compensation for any economic impact resulting from regulation necessary pursuant to the terms of Laws 2007, LB 701.

Source: Laws 1975, LB 577, § 1; Laws 1981, LB 146, § 4; Laws 1982, LB 375, § 1; Laws 1983, LB 378, § 1; Laws 1984, LB 1071, § 1; Laws 1986, LB 894, § 20; Laws 1993, LB 3, § 7; R.S.1943, (1993), § 46-656; Laws 1996, LB 108, § 8; Laws 2003, LB 619, § 10; R.S.Supp.,2003, § 46-656.02; Laws 2004, LB 962, § 42; Laws 2007, LB701, § 21.

46-705 Act; how construed.

Nothing in the Nebraska Ground Water Management and Protection Act shall be construed to limit the powers of the Department of Health and Human Services provided in the Nebraska Safe Drinking Water Act.

Nothing in the Nebraska Ground Water Management and Protection Act relating to the contamination of ground water is intended to limit the powers of the Department of Environmental Quality provided in Chapter 81, article 15.

Source: Laws 1986, LB 894, § 19; R.S.1943, (1993), § 46-674.20; Laws 1996, LB 108, § 10; Laws 1996, LB 1044, § 261; R.S.1943, (1998), § 46-656.04; Laws 2004, LB 962, § 45; Laws 2007, LB296, § 203.

Cross References

Nebraska Safe Drinking Water Act, see section 71-5313.

46-706 Terms, defined.

For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the Nebraska Ground Water Management and Protection Act, and

sections 46-601 to 46-613.02, 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise requires:

(1) Person means a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an irrigation district, an agency or a political subdivision of the state, or a department, an agency, or a bureau of the United States;

(2) Ground water means that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land;

(3) Contamination or contamination of ground water means nitrate nitrogen or other material which enters the ground water due to action of any person and causes degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;

(4) District means a natural resources district operating pursuant to Chapter 2, article 32;

(5) Illegal water well means (a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any water well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws;

(6) To commence construction of a water well means the beginning of the boring, drilling, jetting, digging, or excavating of the actual water well from which ground water is to be withdrawn;

(7) Management area means any area so designated by a district pursuant to section 46-712 or 46-718, by the Director of Environmental Quality pursuant to section 46-725, or by the Interrelated Water Review Board pursuant to section 46-719. Management area includes a control area or a special ground water quality protection area designated prior to July 19, 1996;

(8) Management plan means a ground water management plan developed by a district and submitted to the Director of Natural Resources for review pursuant to section 46-711;

(9) Ground water reservoir life goal means the finite or infinite period of time which a district establishes as its goal for maintenance of the supply and quality of water in a ground water reservoir at the time a ground water management plan is adopted;

(10) Board means the board of directors of a district;

(11) Acre-inch means the amount of water necessary to cover an acre of land one inch deep;

(12) Subirrigation or subirrigated land means the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground;

(13) Best management practices means schedules of activities, maintenance procedures, and other management practices utilized for purposes of irrigation efficiency, to conserve or effect a savings of ground water, or to prevent or reduce present and future contamination of ground water. Best management practices relating to contamination of ground water may include, but not be

limited to, irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the district shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy;

(14) Point source means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or other conveyance, over which the Department of Environmental Quality has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged;

(15) Allocation, as it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time;

(16) Rotation means a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, monthly, or yearly basis;

(17) Water well has the same meaning as in section 46-601.01;

(18) Surface water project sponsor means an irrigation district created pursuant to Chapter 46, article 1, a reclamation district created pursuant to Chapter 46, article 5, or a public power and irrigation district created pursuant to Chapter 70, article 6;

(19) Beneficial use means that use by which water may be put to use to the benefit of humans or other species;

(20) Consumptive use means the amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use is lawfully made;

(21) Dewatering well means a well constructed and used solely for the purpose of lowering the ground water table elevation;

(22) Emergency situation means any set of circumstances that requires the use of water from any source that might otherwise be regulated or prohibited and the agency, district, or organization responsible for regulating water use from such source reasonably and in good faith believes that such use is necessary to protect the public health, safety, and welfare, including, if applicable, compliance with federal or state water quality standards;

(23) Good cause shown means a reasonable justification for granting a variance for a consumptive use of water that would otherwise be prohibited by rule or regulation and which the granting agency, district, or organization reasonably and in good faith believes will provide an economic, environmental, social, or public health and safety benefit that is equal to or greater than the benefit resulting from the rule or regulation from which a variance is sought;

(24) Historic consumptive use means the amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made;

(25) Monitoring well means a water well that is designed and constructed to provide ongoing hydrologic or water quality information and is not intended for consumptive use;

(26) Order, except as otherwise specifically provided, includes any order required by the Nebraska Ground Water Management and Protection Act, by rule or regulation, or by a decision adopted by a district by vote of the board of directors of the district taken at any regularly scheduled or specially scheduled meeting of the board;

(27) Overall difference between the current and fully appropriated levels of development means the extent to which existing uses of hydrologically connected surface water and ground water and conservation activities result in the water supply available for purposes identified in subsection (3) of section 46-713 to be less than the water supply available if the river basin, subbasin, or reach had been determined to be fully appropriated in accordance with section 46-714;

(28) Test hole means a hole designed solely for the purposes of obtaining information on hydrologic or geologic conditions;

(29) Variance means (a) an approval to deviate from a restriction imposed under subsection (1), (2), (8), or (9) of section 46-714 or (b) the approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable;

(30) Certified irrigated acres means the number of acres or portion of an acre that a natural resources district has approved for irrigation from ground water in accordance with law and with rules adopted by the district; and

(31) Certified water uses means beneficial uses of ground water for purposes other than irrigation identified by a district pursuant to rules adopted by the district.

Source: Laws 1975, LB 577, § 2; Laws 1980, LB 643, § 9; Laws 1981, LB 146, § 5; Laws 1981, LB 325, § 1; Laws 1982, LB 375, § 2; Laws 1983, LB 378, § 2; Laws 1984, LB 1071, § 2; Laws 1986, LB 886, § 5; Laws 1986, LB 894, § 21; Laws 1991, LB 51, § 1; Laws 1993, LB 3, § 8; Laws 1993, LB 121, § 279; Laws 1993, LB 131, § 24; Laws 1993, LB 439, § 1; Laws 1993, LB 789, § 5; R.S.1943, (1993), § 46-657; Laws 1996, LB 108, § 13; Laws 2000, LB 900, § 190; Laws 2001, LB 135, § 1; Laws 2003, LB 93, § 1; R.S.Supp.,2003, § 46-656.07; Laws 2004, LB 962, § 46; Laws 2006, LB 1226, § 21; Laws 2009, LB477, § 4; Laws 2009, LB483, § 2.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-707 Natural resources district; powers; enumerated.

(1) Regardless of whether or not any portion of a district has been designated as a management area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(a) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(b) Require such reports from ground water users as may be necessary;

(c) Require the reporting of water uses and irrigated acres by landowners and others with control over the water uses and irrigated acres for the purpose of certification by the district;

(d) Require meters to be placed on any water wells for the purpose of acquiring water use data;

(e) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(f) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

(g) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(h) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

Before any rule or regulation is adopted pursuant to this subsection, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 46-743.

(2) In addition to the powers enumerated in subsection (1) of this section, a district may impose an immediate temporary stay for a period of one hundred eighty days on the construction of any new water well and on any increase in the number of acres historically irrigated, without prior notice or hearing, upon adoption of a resolution by the board finding that such temporary immediate stay is necessary. The district shall hold at least one public hearing on the matter within the district during such one hundred eighty days, with the notice of the hearing given as provided in section 46-743, prior to making a determination as to imposing a permanent stay or conditions in accordance with subsections (1) and (6) of section 46-739. Within forty-five days after a hearing pursuant to this subsection, the district shall decide whether to exempt from the immediate temporary stay the construction of water wells for which permits were issued prior to the date of the resolution commencing the stay but for which construction had not begun prior to such date. If construction of such water wells is allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay and such water wells shall otherwise be completed in accordance with section 46-738. Water wells listed in subsection (3) of section 46-714 and water wells of public water suppliers are exempt from this subsection.

Source: Laws 1975, LB 577, § 8; Laws 1979, LB 26, § 2; Laws 1982, LB 375, § 18; Laws 1984, LB 1071, § 6; Laws 1986, LB 894, § 24; Laws 1993, LB 3, § 10; Laws 1993, LB 131, § 29; Laws 1995, LB 871, § 6; R.S.Supp.,1995, § 46-663; Laws 1996, LB 108, § 14; R.S.1943, (1998), § 46-656.08; Laws 2004, LB 962, § 47; Laws 2007, LB701, § 22; Laws 2009, LB477, § 5.

46-712 Management area; establishment; when; hearing; notice; procedure; district; powers and duties.

(1) A natural resources district may establish a ground water management area in accordance with this section to accomplish any one or more of the following objectives: (a) Protection of ground water quantity; (b) protection of ground water quality; or (c) prevention or resolution of conflicts between users of ground water and appropriators of surface water, which ground water and surface water are hydrologically connected.

(2) Prior to establishment by a district of a management area other than a management area being established in accordance with section 46-718, the district's management plan shall have been approved by the Director of Natural Resources or the district shall have completed the requirements of subsection (2) of section 46-711. If necessary to determine whether a management area should be designated, the district may initiate new studies and data-collection efforts and develop computer models. In order to establish a management area, the district shall fix a time and place for a public hearing to consider the management plan information supplied by the director and to hear any other evidence. The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area. Notice of the hearing shall be published as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

(3)(a) Within ninety days after the hearing, the district shall determine whether a management area shall be designated. If the district determines that no management area shall be established, the district shall issue an order to that effect.

(b) If the district determines that a management area shall be established, the district shall by order designate the area as a management area and shall adopt one or more controls authorized by section 46-739 to be utilized within the area in order to achieve the ground water management objectives specified in the plan. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the ability of the district to implement and carry out local ground water management.

(c) The controls adopted shall not include controls substantially different from those set forth in the notice of the hearing. The area designated by the order shall not include any area not included in the notice of the hearing.

(4) Modification of the boundaries of a district-designated management area or dissolution of such an area shall be in accordance with the procedures established in this section. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Hearings for modification of controls may be initiated as often as deemed necessary by the district, and such modifications may be accomplished using the procedure in this section.

(5) A district shall, prior to adopting or amending any rules or regulations for a management area, consult with any holders of permits for intentional or incidental underground water storage and recovery issued pursuant to section 46-226.02, 46-233, 46-240, 46-241, 46-242, or 46-297.

(6) If a ground water management area has been adopted by a district under this section that includes one or more controls authorized by subdivision (1)(f) or (1)(m) of section 46-739, the district may request the Department of Natural Resources to conduct an evaluation to determine if an immediate stay should be placed on the issuance of new surface water natural-flow appropriations in

the area, river basin, subbasin, or reach of the management area, and the department may determine that the stay is in the public interest. The stay may include provisions for exceptions to be granted for beneficial uses as described in subsection (3) of section 46-714 or for a project that provides hydrological benefit to the area of the stay and may include provisions that the stay may be rescinded based on new or additional information that may become available.

Source: Laws 1982, LB 375, § 7; Laws 1986, LB 894, § 28; Laws 1991, LB 51, § 2; Laws 1993, LB 3, § 13; R.S.1943, (1993), § 46-673.05; Laws 1996, LB 108, § 25; Laws 1997, LB 188, § 1; Laws 2000, LB 900, § 195; R.S.Supp.,2002, § 46-656.19; Laws 2004, LB 962, § 52; Laws 2006, LB 1226, § 22.

46-713 Department of Natural Resources; hydrologically connected water supplies; evaluation; report; determinations; revaluation; hearing; notice.

(1)(a) By January 1 of each year beginning in 2006 and except as otherwise provided in this section and section 46-720, the Department of Natural Resources shall complete an evaluation of the expected long-term availability of hydrologically connected water supplies for both existing and new surface water uses and existing and new ground water uses in each of the state's river basins and shall issue a report that describes the results of the evaluation. For purposes of the evaluation and the report, a river basin may be divided into two or more subbasins or reaches. A river basin, subbasin, or reach for which an integrated management plan has been or is being developed pursuant to sections 46-715 to 46-717 or pursuant to section 46-719 shall not be evaluated unless it is being reevaluated as provided in subsection (2) of this section. For each river basin, subbasin, or reach evaluated, the report shall describe (i) the nature and extent of use of both surface water and ground water in each river basin, subbasin, or reach, (ii) the geographic area within which the department preliminarily considers surface water and ground water to be hydrologically connected and the criteria used for that determination, and (iii) the extent to which the then-current uses affect available near-term and long-term water supplies. River basins, subbasins, and reaches designated as overappropriated in accordance with subsection (4) of this section shall not be evaluated by the department. The department is not required to perform an annual evaluation for a river basin, subbasin, or reach during the four years following a status change in such river basin, subbasin, or reach under subsection (12) of section 46-714.

(b) Based on the information reviewed in the evaluation process, the department shall arrive at a preliminary conclusion for each river basin, subbasin, and reach evaluated as to whether such river basin, subbasin, or reach presently is fully appropriated without the initiation of additional uses. The department shall also determine if and how such preliminary conclusion would change if no additional legal constraints were imposed on future development of hydrologically connected surface water and ground water and reasonable projections are made about the extent and location of future development in such river basin, subbasin, or reach.

(c) In addition to the conclusion about whether a river basin, subbasin, or reach is fully appropriated, the department shall include in the report, for informational purposes only, a summary of relevant data provided by any interested party concerning the social, economic, and environmental impacts of

additional hydrologically connected surface water and ground water uses on resources that are dependent on streamflow or ground water levels but are not protected by appropriations or regulations.

(d) In preparing the report, the department shall rely on the best scientific data, information, and methodologies readily available to ensure that the conclusions and results contained in the report are reliable. In its report, the department shall provide sufficient documentation to allow these data, information, methodologies, and conclusions to be independently replicated and assessed. Upon request by the department, state agencies, natural resources districts, irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, municipalities, and other water users and stakeholders shall provide relevant data and information in their possession. The Department of Natural Resources shall specify by rule and regulation the types of scientific data and other information that will be considered for making the preliminary determinations required by this section.

(2)(a) The department shall complete a reevaluation of a river basin, subbasin, or reach for which an integrated management plan has been or is being prepared if the department has reason to believe that a reevaluation might lead to a different determination about whether such river basin, subbasin, or reach is fully appropriated or overappropriated. A decision to reevaluate may be reached by the department on its own or in response to a petition filed with the department by any interested person. To be considered sufficient to justify a reevaluation, a petition shall be accompanied by supporting information showing that (i) new scientific data or other information relevant to the determination of whether the river basin, subbasin, or reach is fully appropriated or overappropriated has become available since the last evaluation of such river basin, subbasin, or reach, (ii) the department relied on incorrect or incomplete information when the river basin, subbasin, or reach was last evaluated, or (iii) the department erred in its interpretation or application of the information available when the river basin, subbasin, or reach was last evaluated. If a petition determined by the department to be sufficient is filed before July 1 of any year, the reevaluation of the river basin, subbasin, or reach involved shall be included in the next annual report prepared in accordance with subsection (1) of this section. If any such petition is filed on or after July 1 of any year, the department may defer the reevaluation of the river basin, subbasin, or reach involved until the second annual report after such filing.

(b) If the reevaluation results in a different determination by the department, then (i) the department shall notify, by certified mail, the affected natural resources districts and any irrigation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach of the preliminary change in the determination and (ii) the department shall hold one or more public hearings not more than ninety days after the publication of the notice required in subdivision (b)(i) of this subsection. Notice of the hearings shall be provided in the same manner as the notice required in subsection (1) of section 46-714. Any interested person may appear at the hearing and present written or oral testimony and evidence concerning the appropriation status of the river basin, subbasin, or reach.

(c) Within thirty days after the final hearing under subdivision (b) of this subsection, the department shall notify the appropriate natural resources dis-

tricts of the department's final determination with respect to the appropriation status of the river basin, subbasin, or reach.

(3) A river basin, subbasin, or reach shall be deemed fully appropriated if the department determines based upon its evaluation conducted pursuant to subsection (1) of this section and information presented at the hearing pursuant to subsection (4) of section 46-714 that then-current uses of hydrologically connected surface water and ground water in the river basin, subbasin, or reach cause or will in the reasonably foreseeable future cause (a) the surface water supply to be insufficient to sustain over the long term the beneficial or useful purposes for which existing natural-flow or storage appropriations were granted and the beneficial or useful purposes for which, at the time of approval, any existing instream appropriation was granted, (b) the streamflow to be insufficient to sustain over the long term the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved, or (c) reduction in the flow of a river or stream sufficient to cause noncompliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws.

(4)(a) A river basin, subbasin, or reach shall be deemed overappropriated if, on July 16, 2004, the river basin, subbasin, or reach is subject to an interstate cooperative agreement among three or more states and if, prior to such date, the department has declared a moratorium on the issuance of new surface water appropriations in such river basin, subbasin, or reach and has requested each natural resources district with jurisdiction in the affected area in such river basin, subbasin, or reach either (i) to close or to continue in effect a previously adopted closure of all or part of such river basin, subbasin, or reach to the issuance of additional water well permits in accordance with subdivision (1)(k) of section 46-656.25 as such section existed prior to July 16, 2004, or (ii) to temporarily suspend or to continue in effect a temporary suspension, previously adopted pursuant to section 46-656.28 as such section existed prior to July 16, 2004, on the drilling of new water wells in all or part of such river basin, subbasin, or reach.

(b) Within sixty days after July 16, 2004, the department shall designate which river basins, subbasins, or reaches are overappropriated. The designation shall include a description of the geographic area within which the department has determined that surface water and ground water are hydrologically connected and the criteria used to make such determination.

Source: Laws 2004, LB 962, § 53; Laws 2006, LB 1226, § 23; Laws 2009, LB54, § 1; Laws 2009, LB483, § 3.

46-714 River basin, subbasin, or reach; stay on new appropriations; notifications required; hearing; natural resources district; duties; status change; department; natural resources district; duties.

(1) Whenever the Department of Natural Resources makes a preliminary determination that a river basin, subbasin, or reach not previously designated as overappropriated and not previously determined to be fully appropriated has become fully appropriated, the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in such river basin, subbasin, or reach. The department shall also provide prompt notice of such preliminary determination to all licensed water well contractors in the state and to each natural resources district that encompasses any of the

geographic area involved. Such notice to natural resources districts shall be by certified mail. The notice shall be addressed to the manager of the natural resources district or his or her designee and shall include the signature of the Director of Natural Resources. Immediately upon receipt of such notice by the natural resources district, there shall be a stay on issuance of water well construction permits in the geographic area preliminarily determined by the department to include hydrologically connected surface water and ground water in such river basin, subbasin, or reach. The department shall also notify the public of the preliminary determination that the river basin, subbasin, or reach is fully appropriated and of the affected geographic area. Such notice shall be provided by publication once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspaper or newspapers as are deemed appropriate by the department to provide general circulation in the river basin, subbasin, or reach.

(2) If the department preliminarily determines a river basin, subbasin, or reach to be fully appropriated and has identified the existence of hydrologically connected surface water and ground water in such river basin, subbasin, or reach, stays shall also be imposed:

(a) On the construction of any new water well in the area covered by the determination unless a permit with conditions imposed by the natural resources district has been issued prior to the determination. Such conditions shall meet the objectives of subsection (4) of section 46-715 and may include, but are not limited to, conditions in accordance with subsection (6) of section 46-739. Any well constructed pursuant to such permit shall be completed in accordance with section 46-738; and

(b) On the use of an existing water well or an existing surface water appropriation in the affected area to increase the number of acres historically irrigated.

Such additional stays shall begin ten days after the first publication, in a newspaper of statewide circulation, of the notice of the preliminary determination that the river basin, subbasin, or reach is fully appropriated.

(3) Exceptions to the stays imposed pursuant to subsection (1), (2), (8), or (9) of this section shall exist for (a) test holes, (b) dewatering wells with an intended use of one year or less, (c) monitoring wells, (d) wells constructed pursuant to a ground water remediation plan under the Environmental Protection Act, (e) water wells designed and constructed to pump fifty gallons per minute or less, except that no two or more water wells that each pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute, (f) water wells for range livestock, (g) new surface water uses or water wells that are necessary to alleviate an emergency situation involving the provision of water for human consumption or public health and safety, (h) water wells defined by the applicable natural resources district as replacement water wells, but the consumptive use of any such replacement water well can be no greater than the historic consumptive use of the water well it is to replace or, if applicable, the historic consumptive use of the surface water use it is to replace, (i) new surface water uses and water wells to which a right or permit is transferred in accordance with state law, but the consumptive use of any such new use can be no greater than the historic consumptive use of the surface water use or water well from which the right or permit is being transferred, (j)

water wells and increases in ground water irrigated acres for which a variance is granted by the applicable natural resources district for good cause shown, (k) subject to any conditions imposed by the applicable natural resources district, to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that were permitted prior to the effective date of the determination made in subsection (1) of this section and completed in accordance with section 46-738 but were not used for irrigation prior to that effective date, (l) to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that are constructed after the effective date of the stay in accordance with a permit granted by that natural resources district prior to the effective date of the stay, (m) surface water uses for which temporary public-use construction permits are issued pursuant to subsection (8) of section 46-233, (n) surface water uses and increases in surface water irrigated acres for which a variance is granted by the department for good cause shown, and (o) water wells for which permits have been approved by the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act prior to the effective date of the stay.

(4) Except as otherwise provided in this section, any stay imposed pursuant to subsections (1) and (2) of this section shall remain in effect for the affected river basin, subbasin, or reach until the department has made a final determination regarding whether the river basin, subbasin, or reach is fully appropriated and, if the department's final determination is that the river basin, subbasin, or reach is fully appropriated, shall remain in effect as provided in subsection (11) of this section. Within the time period between the dates of the preliminary and final determinations, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or the natural resources districts. The department shall also hold one or more public hearings not more than ninety days after the first publication of the notice required by subsection (1) of this section. Notice of the hearings shall be provided in the same manner as the notice required by such subsection. Any interested person may appear at such hearing and present written or oral testimony and evidence concerning the appropriation status of the river basin, subbasin, or reach, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether the stays on new uses should be terminated.

(5) Within thirty days after the final hearing under subsection (4) of this section, the department shall notify the appropriate natural resources districts of the department's final determination with respect to the appropriation status of the river basin, subbasin, or reach. If the final determination is that the river basin, subbasin, or reach is fully appropriated, the department, at the same time, shall (a) decide whether to continue or to terminate the stays on new surface water uses and on increases in the number of surface water irrigated acres and (b) designate the geographic area within which the department considers surface water and ground water to be hydrologically connected in the river basin, subbasin, or reach and describe the methods and criteria used in making that determination. The department shall provide notice of its decision

to continue or terminate the stays in the same manner as the notice required by subsection (1) of this section.

(6) Within ninety days after a final determination by the department that a river basin, subbasin, or reach is fully appropriated, an affected natural resources district may hold one or more public hearings on the question of whether the stays on the issuance of new water well permits, on the construction of new water wells, or on increases in ground water irrigated acres should be terminated. Notice of the hearings shall be published as provided in section 46-743.

(7) Within forty-five days after a natural resources district's final hearing pursuant to subsection (6) of this section, the natural resources district shall decide (a) whether to terminate the stay on new water wells in all or part of the natural resources district subject to the stay and (b) whether to terminate the stay on increases in ground water irrigated acres. If the natural resources district decides not to terminate the stay on new water wells in any geographic area, it shall also decide whether to exempt from such stay the construction of water wells for which permits were issued prior to the issuance of the stay but for which construction had not begun prior to issuance of the stay. If construction of water wells for which permits were issued prior to the stay is allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay.

(8) Whenever the department designates a river basin, subbasin, or reach as overappropriated, each previously declared moratorium on the issuance of new surface water appropriations in the river basin, subbasin, or reach shall continue in effect. The department shall also provide prompt notice of such designation to all licensed water well contractors in the state and to each natural resources district that encompasses any of the geographic area involved. Immediately upon receipt of such notice by a natural resources district, there shall be a stay on the issuance of new water well construction permits in any portion of such natural resources district that is within the hydrologically connected area designated by the department. The department shall also notify the public of its designation of such river basin, subbasin, or reach as overappropriated and of the geographic area involved in such designation. Such notice shall be published once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspapers as are deemed appropriate by the department to provide general notice in the river basin, subbasin, or reach.

(9) Beginning ten days after the first publication of notice under subsection (8) of this section in a newspaper of statewide circulation, there shall also be stays (a) on the construction of any new water well in the hydrologically connected area if such construction has not commenced prior to such date and if no permit for construction of the water well has been issued previously by either the department or the natural resources district, (b) on the use of an existing water well in the hydrologically connected area to increase the number of acres historically irrigated, and (c) on the use of an existing surface water appropriation to increase the number of acres historically irrigated in the affected area.

(10) Within ninety days after a designation by the department of a river basin, subbasin, or reach as overappropriated, a natural resources district that encompasses any of the hydrologically connected area designated by the department

may hold one or more public hearings on the question of whether to terminate the stays on (a) the construction of new water wells within all or part of its portion of the hydrologically connected area, (b) the issuance of new water well construction permits in such area, or (c) the increase in ground water irrigated acres in such area. Notice of any hearing for such purpose shall be provided pursuant to section 46-743. Prior to the scheduling of a natural resources district hearing on the question of whether to terminate any such stay, the department and the affected natural resources district shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or the natural resources district.

(11) Any stay issued pursuant to this section shall remain in effect until (a) the stay has been terminated pursuant to subsection (5), (7), or (10) of this section, (b) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the department and the affected natural resources districts and has taken effect, (c) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the Interrelated Water Review Board and has taken effect, (d) the department has completed a reevaluation pursuant to subsection (2) of section 46-713 and has determined that the affected river basin, subbasin, or reach is not fully appropriated or overappropriated, or (e) the stay expires pursuant to this subsection. Such stay may be imposed initially for not more than three years following the department's designation of the river basin, subbasin, or reach as overappropriated or the department's final determination that a river basin, subbasin, or reach is fully appropriated and may be extended thereafter on an annual basis by agreement of the department and the affected natural resources district for not more than two additional years if necessary to allow the development, adoption, and implementation of an integrated management plan pursuant to sections 46-715 to 46-719.

(12)(a) For purposes of this subsection, (i) a status change occurs when a preliminary or final determination that a river basin, subbasin, or reach is fully appropriated is reversed by the department or by judicial determination and such river basin, subbasin, or reach is determined not to be fully appropriated and (ii) the hydrologically connected area means the geographic area within which the department considers surface water and ground water in such river basin, subbasin, or reach to be hydrologically connected.

(b) If a status change occurs, any stays previously in force by the department or affected natural resources districts shall remain in force until the stays imposed under this subsection are in place and the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in the river basin, subbasin, or reach. The department shall also provide prompt notice of the status change in accordance with subsection (1) of this section. Immediately upon receipt of the notice by the affected natural resources district, there shall be stays imposed as set forth in subsections (1) and (2) of this section, subject to the exceptions set forth in subsection (3) of this section. The stays imposed pursuant to this subsection shall remain in effect within each affected natural resources district until such district adopts rules and regulations in accordance with subdivision (c), (d), or (e) of this subsection.

(c) Upon receipt of notice of a status change, each affected natural resources district shall adopt rules and regulations within one hundred twenty days after receipt of such notice for the prioritization and granting of water well permits within the hydrologically connected area for the four-year period following the status change. Nothing in this subsection shall be construed to supersede the authority provided to natural resources districts under subsection (2) of section 46-707 and subdivisions (1)(f) and (1)(m) of section 46-739.

(d) The rules and regulations adopted by each affected natural resources district in accordance with subdivision (c) of this subsection shall (i) allow a limited number of total new ground water irrigated acres annually, (ii) be created with the purpose of maintaining the status of not fully appropriated based on the most recent basin determination, (iii) be for a term of not less than four years, and (iv) limit the number of new permits so that total new ground water irrigated acres do not exceed the number set in the rules and regulations. The department shall approve the proposed new number of ground water irrigated acres within sixty days after approval by the natural resources district if such district meets the conditions set forth in subdivision (d)(ii) of this subsection, based on the most recent basin determination.

(e) If the proposed new number of acres is not approved by the department within the applicable time period as provided in subdivision (d) of this subsection, the affected natural resources districts shall adopt rules and regulations that allow water well permits to be issued that will result in no more than two thousand five hundred irrigated acres or that will result in an increase of not more than twenty percent of all historically irrigated acres within the hydrologically connected area of each natural resources district within the affected river basin, subbasin, or reach, whichever is less, for each calendar year of the four-year period following the date of the determination described in this subsection. Each affected natural resources district may, after the initial four-year period has expired, annually determine whether water well permit limitations should continue and may enforce such limitations.

(f) During the four-year period following the status change, the department shall ensure that any new appropriation granted will not cause the basin, subbasin, or reach to be fully appropriated based on the most recent basin determination. The department, pursuant to its rules and regulations, shall not issue new natural flow surface water appropriations for irrigation, within the river basin, subbasin, or reach affected by the status change, that will result in a net increase of more than eight hundred thirty-four irrigated acres in each natural resources district during each calendar year of the four-year period following the date of the determination described in this subsection.

Source: Laws 2004, LB 962, § 54; Laws 2006, LB 1226, § 24; Laws 2009, LB54, § 2; Laws 2009, LB483, § 4.

Cross References

Environmental Protection Act, see section 81-1532.
Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-715 River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.

(1)(a) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determina-

tion that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall be completed, adopted, and take effect within three years after such designation or final determination unless the department and the natural resources districts jointly agree to an extension of not more than two additional years.

(b) A natural resources district encompassing a river basin, subbasin, or reach that has not been designated as overappropriated or has not been finally determined to be fully appropriated may, jointly with the department, develop an integrated management plan for such river basin, subbasin, or reach located within the district. The district shall notify the department of its intention to develop an integrated management plan which shall be developed and adopted according to sections 46-715 to 46-717 and subsections (1) and (2) of section 46-718. The objective of an integrated management plan under this subdivision is to manage such river basin, subbasin, or reach to achieve and sustain a balance between water uses and water supplies for the long term. If a district develops an integrated management plan under this subdivision and the department subsequently determines the affected river basin, subbasin, or reach to be fully appropriated, the department and the affected natural resources district may amend the integrated management plan.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the geographic area subject to the integrated management plan; (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 46-739; (d) one or more of the surface water controls authorized for adoption by the department pursuant to section 46-716; and (e) a plan to gather and evaluate data, information, and methodologies that could be used to implement sections 46-715 to 46-717, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. The plan may also provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, but a natural resources district may voluntarily adopt such regulations. The applicable natural resources district may decide to include all water users within the district boundary in an integrated management plan.

(3) In order to provide a process for economic development opportunities and economic sustainability within a river basin, subbasin, or reach, the integrated management plan shall include clear and transparent procedures to track depletions and gains to streamflows resulting from new, retired, or other

changes to uses within the river basin, subbasin, or reach. The procedures shall:

(a) Utilize generally accepted methodologies based on the best available information, data, and science;

(b) Include a generally accepted methodology to be utilized to estimate depletions and gains to streamflows, which methodology includes location, amount, and time regarding gains to streamflows as offsets to new uses;

(c) Identify means to be utilized so that new uses will not have more than a de minimis effect upon existing surface water users or ground water users;

(d) Identify procedures the natural resources district and the department will use to report, consult, and otherwise share information on new uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach;

(e) Identify, to the extent feasible, potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement;

(f) Develop, to the extent feasible, an outline of plans after consultation with and an opportunity to provide input from irrigation districts, public power and irrigation districts, reclamation districts, municipalities, other political subdivisions, and other water users to make water available for offset to enhance and encourage economic development opportunities and economic sustainability in the river basin, subbasin, or reach; and

(g) Clearly identify procedures that applicants for new uses shall take to apply for approval of a new water use and corresponding offset.

Nothing in this subsection shall require revision or amendment of an integrated management plan approved on or before August 30, 2009.

(4) The ground water and surface water controls proposed for adoption in the integrated management plan pursuant to subsection (1) of this section shall, when considered together and with any applicable incentive programs, (a) be consistent with the goals and objectives of the plan, (b) be sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies, and (c) protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun, in the case of a river basin, subbasin, or reach designated as overappropriated or preliminarily determined to be fully appropriated in accordance with section 46-713, after the date of such designation or preliminary determination.

(5)(a) In any river basin, subbasin, or reach that is designated as overappropriated, when the designated area lies within two or more natural resources districts, the department and the affected natural resources districts shall jointly develop a basin-wide plan for the area designated as overappropriated. Such plan shall be developed using the consultation and collaboration process described in subdivision (b) of this subsection, shall be developed concurrently with the development of the integrated management plan required pursuant to subsections (1) through (4) of this section, and shall be designed to achieve, in the incremental manner described in subdivision (d) of this subsection, the

goals and objectives described in subsection (2) of this section. The basin-wide plan shall be adopted after hearings by the department and the affected natural resources districts.

(b) In any river basin, subbasin, or reach designated as overappropriated and subject to this subsection, the department and each natural resources district encompassing such river basin, subbasin, or reach shall jointly develop an integrated management plan for such river basin, subbasin, or reach pursuant to subsections (1) through (4) of this section. Each integrated management plan for a river basin, subbasin, or reach subject to this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection. Such integrated management plan shall be developed after consultation and collaboration with irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to participate in such process. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and each natural resources district shall adopt the agreed-upon integrated management plan. If agreement cannot be reached by all parties involved, the integrated management plan shall be developed and adopted by the department and the affected natural resources district pursuant to sections 46-715 to 46-718 or by the Interrelated Water Review Board pursuant to section 46-719.

(c) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated levels of development. Such determination shall take into account cyclical supply, including drought, identify the portion of the overall difference between the current and fully appropriated levels of development that is due to conservation measures, and identify the portions of the overall difference between the current and fully appropriated levels of development that are due to water use initiated prior to July 1, 1997, and to water use initiated on or after such date.

(d) Any integrated management plan developed under this subsection shall adopt an incremental approach to achieve the goals and objectives identified under subdivision (2)(a) of this section using the following steps:

(i) The first incremental goals shall be to address the impact of streamflow depletions to (A) surface water appropriations and (B) water wells constructed in aquifers dependent upon recharge from streamflow, to the extent those depletions are due to water use initiated after July 1, 1997, and, unless an interstate cooperative agreement for such river basin, subbasin, or reach is no longer in effect, to prevent streamflow depletions that would cause noncompliance by Nebraska with such interstate cooperative agreement. During the first increment, the department and the affected natural resources districts shall also pursue voluntary efforts, subject to the availability of funds, to offset any increase in streamflow depletive effects that occur after July 1, 1997, but are caused by ground water uses initiated prior to such date. The department and the affected natural resources districts may also use other appropriate and authorized measures for such purpose;

(ii) The department and the affected natural resources districts may amend an integrated management plan subject to this subsection (5) as necessary

based on an annual review of the progress being made toward achieving the goals for that increment;

(iii) During the ten years following adoption of an integrated management plan developed under this subsection (5) or during the ten years after the adoption of any subsequent increment of the integrated management plan pursuant to subdivision (d)(iv) of this subsection, the department and the affected natural resources district shall conduct a technical analysis of the actions taken in such increment to determine the progress towards meeting the goals and objectives adopted pursuant to subsection (2) of this section. The analysis shall include an examination of (A) available supplies and changes in long-term availability, (B) the effects of conservation practices and natural causes, including, but not limited to, drought, and (C) the effects of the plan on reducing the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section. The analysis shall determine whether a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted pursuant to subsection (2) of this section and reduce the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section;

(iv) Based on the determination made in subdivision (d)(iii) of this subsection, the department and the affected natural resources districts, utilizing the consultative and collaborative process described in subdivision (b) of this subsection, shall if necessary identify goals for a subsequent increment of the integrated management plan. Subsequent increments shall be completed, adopted, and take effect not more than ten years after adoption of the previous increment; and

(v) If necessary, the steps described in subdivisions (d)(ii) through (iv) of this subsection shall be repeated until the department and the affected natural resources districts agree that the goals and objectives identified pursuant to subsection (2) of this section have been met and the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section has been addressed so that the river basin, subbasin, or reach has returned to a fully appropriated condition.

(6) In any river basin, subbasin, or reach that is designated as fully appropriated or overappropriated and whenever necessary to ensure that the state is in compliance with an interstate compact or decree or a formal state contract or agreement, the department, in consultation with the affected districts, shall forecast on an annual basis the maximum amount of water that may be available from streamflow for beneficial use in the short term and long term in order to comply with the requirement of subdivision (4)(b) of this section. This forecast shall be made by January 1, 2008, and each January 1 thereafter.

Source: Laws 2004, LB 962, § 55; Laws 2006, LB 1226, § 25; Laws 2007, LB701, § 23; Laws 2009, LB54, § 3; Laws 2010, LB764, § 1. Effective date July 15, 2010.

46-717 Integrated management plan; scientific data and other information; department; natural resources district; duties.

(1) In developing an integrated management plan, the Department of Natural Resources and the affected natural resources districts shall utilize the best scientific data and other information available and shall review and consider

any rules and regulations in effect in any existing ground water management area that encompasses all or part of the geographic area to be encompassed by the plan. Consideration shall be given to the applicable scientific data and other information relied upon by the department in preparing the annual report required by section 46-713 and to other types of data and information that may be deemed appropriate by the department. The department, after seeking input from the affected natural resources districts, shall specify by rule and regulation the types of scientific data and other information that will be considered in developing an integrated management plan. The natural resources districts shall adopt similar rules and regulations specifying the types of scientific data and other information necessary for purposes of this section. Existing research, data, studies, or any other relevant information which has been compiled by or is in possession of other state or federal agencies, other natural resources districts, and other political subdivisions within the State of Nebraska shall be utilized. State agencies and political subdivisions shall furnish information or data upon request of the department or any affected natural resources district. Neither the department nor the natural resources districts shall be required to conduct new research or to develop new computer models to prepare an integrated management plan, but such new research may be conducted or new computer models developed within the limits of available funding if the additional information is desired by the department or the affected natural resources districts.

(2) During preparation of an integrated management plan for a fully appropriated river basin, subbasin, or reach or of an integrated management plan under subdivision (1)(b) of section 46-715, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or by the affected natural resources districts. They shall also actively solicit public comments and opinions through public meetings and other means.

Source: Laws 2004, LB 962, § 57; Laws 2010, LB764, § 2.
Effective date July 15, 2010.

46-719 Interrelated Water Review Board; created; members; powers and duties.

(1)(a) The Interrelated Water Review Board is created for the purposes stated in subsections (2) through (5) of this section. The board shall consist of five members. The board, when appointed and convened, shall continue in existence only until it has resolved a dispute referred to it pursuant to such subsections. The Governor shall appoint and convene the board within forty-five days of being notified of the need to resolve a dispute. The board shall be chaired by the Governor or his or her designee, which designee shall be knowledgeable concerning surface water and ground water issues. The Governor shall appoint one additional member of his or her choosing and shall appoint the other three members of the board from a list of no fewer than six nominees provided by the Nebraska Natural Resources Commission within twenty days after request by the Governor for a list of nominees.

(b) Not more than two members of the board shall reside in the geographic area involved in the dispute. A person is not eligible for membership on the board if the decisions to be made by the board would or could cause financial benefit or detriment to the person, a member of his or her immediate family, or a business with which the person is associated, unless such benefit or detriment is indistinguishable from the effects of such action on the public generally or a broad segment of the public. The board shall be subject to the Open Meetings Act.

(c) For purposes of subsections (2) and (3) of this section, action may be taken by a vote of three of the board's five members. For purposes of subsections (4) and (5) of this section, action may be taken only by a vote of at least four of the board's five members.

(2)(a) If the Department of Natural Resources and the affected natural resources districts cannot resolve disputes over the content of a basin-wide plan or an integrated management plan by utilizing the process described in sections 46-715 to 46-718, the Governor shall be notified and the dispute submitted to the Interrelated Water Review Board. When the board has been appointed and convened to resolve disputes over a basin-wide plan, the department and each affected district shall present their proposed basin-wide plans to the board. When the board has been convened to resolve disputes over an integrated management plan, the department and each affected natural resources district shall present their (i) proposed goals and objectives for the integrated management plan, (ii) proposed geographic area to be subject to controls, and (iii) proposed surface water and ground water controls and any proposed incentive program for adoption and implementation in the river basin, subbasin, or reach involved. The department and each affected natural resources district shall also be given adequate opportunity to comment on the proposals made by the other parties to the dispute.

(b) When the Interrelated Water Review Board concludes that the issues in dispute have been fully presented and commented upon by the parties to the dispute, which conclusion shall be made not more than forty-five days after the board is convened, the board shall select the proposals or portions of proposals that the board will consider for adoption and shall schedule one or more public hearings to take testimony on the selected proposals. The hearings shall be held within forty-five days after the board's selection of proposals to consider for adoption and shall be within or in reasonable proximity to the area that would be affected by implementation of any of the proposals to be considered at the hearings. Notice of the hearings shall be published as provided in section 46-743. The cost of publishing the notice shall be shared by the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

(c) Within forty-five days after the final hearing pursuant to subdivision (b) of this subsection, the Interrelated Water Review Board shall by order, as applicable, adopt a basin-wide plan or an integrated management plan for the affected river basin, subbasin, or reach and, in the case of an integrated management plan, shall designate a ground water management area for integrated management or an integrated management subarea for such river basin, subbasin, or reach. An integrated management plan shall be consistent with subsection (2) of section 46-715, and the surface water and ground water controls and any applicable incentive programs adopted as part of that plan shall be consistent

with subsection (4) of section 46-715. The controls adopted by the board shall not be substantially different from those described in the notice of hearing. The area designated as a ground water management area or an integrated management subarea shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan.

(d) The order adopted under this subsection shall be published in the manner prescribed in section 46-744.

(e) Surface water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the department. Ground water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the affected natural resources districts.

(3) Whether an integrated management plan is adopted pursuant to section 46-718 or by the Interrelated Water Review Board pursuant to subsection (2) of this section, the department or a natural resources district responsible in part for implementation and enforcement of an integrated management plan may propose modification of the goals or objectives of that plan, of the area subject to the plan, or of the surface water controls, ground water controls, or incentive programs adopted to implement the plan. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on and to adopt and implement proposed modifications. If agreement on such modifications cannot be achieved utilizing those procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section to resolve the dispute and, if applicable, to adopt any modifications utilizing the procedures in subsection (2) of this section.

(4) The department and the affected natural resources districts may also raise objections concerning the implementation or enforcement of previously adopted surface water or ground water controls. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on such implementation or enforcement issues. If agreement on such issues cannot be achieved utilizing such procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section. After permitting each party to fully express its reasons for its position on the disputed issues, the board may either take no action or conclude (a) that one or more parties needs to modify its approach to implementation or enforcement and direct that such modifications take place or (b) that one or more parties either has not made a good faith effort to implement or enforce the portion of the plan or controls for which it is responsible or is unable to fully implement and enforce such portion and that such party's jurisdiction with respect to implementation and enforcement of the plan and controls shall be terminated and reassigned to one or more of the other parties responsible for implementation and enforcement. A decision by the Interrelated Water Review Board to terminate and reassign jurisdiction of any portion of the plan or controls shall take effect immediately upon that decision. Notice of such reassignment shall be published at least once in one or more newspapers as necessary to provide general circulation in the area affected by such reassignment.

(5) The board may be reconvened in accordance with subsection (1) of this section at a later date upon request to the Governor by the party for which jurisdiction for implementation and enforcement was terminated if such party desires to have its jurisdiction reinstated, but no such request shall be honored until at least one year after the termination and not more than once per year thereafter. The board may reinstate jurisdiction to that party only upon a clear showing by such party that it is willing and able to fully implement and enforce the plan and any applicable controls. Notice that a party's jurisdiction has been reinstated shall be provided in the same manner that notice of the earlier termination was given.

Source: Laws 2004, LB 962, § 59; Laws 2006, LB 1226, § 26; Laws 2009, LB54, § 4.

Cross References

Open Meetings Act, see section 84-1407.

46-720 Proceedings under prior law; transitional provisions.

(1) The Legislature finds that, prior to July 16, 2004, actions were taken by the Department of Natural Resources and by one or more natural resources districts pursuant to section 46-656.28, as such section existed immediately prior to such date, for the purpose of addressing circumstances that are, after such date, to be addressed in accordance with sections 46-713 to 46-719. It is the intent of the Legislature that actions taken pursuant to section 46-656.28, as such section existed immediately prior to July 16, 2004, should not be negated and that transition from the authorities and responsibilities granted by such section to those granted by sections 46-713 to 46-719 should occur in as efficient a manner as possible. Such transition shall be therefor governed by subsections (2) through (5) of this section, and all references in such subsections to section 46-656.28 shall be construed to mean section 46-656.28 as such section existed immediately prior to July 16, 2004.

(2) If, prior to July 16, 2004, (a) a natural resources district requested pursuant to subsection (1) of section 46-656.28 that affected appropriators, affected surface water project sponsors, and the department consult and that studies and a hearing be held but (b) the Director of Natural Resources has not made a preliminary determination relative to that request pursuant to subsection (2) of section 46-656.28, no further action on the district's request shall be required of the department. If under the same circumstances a temporary suspension in the drilling of certain water wells has been imposed by the district pursuant to subsection (16) of section 46-656.28 and remains in effect immediately prior to July 16, 2004, such temporary suspension shall remain in effect for thirty days after the department issues its first annual report under section 46-713, except that (i) such temporary suspension shall not apply to water wells for which a permit has been obtained pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act and (ii) to the extent any such temporary suspension is in effect for all or part of a hydrologically connected area for a river basin, subbasin, or reach designated as overappropriated by the department, such temporary suspension shall remain in effect only until it is superseded by the stays imposed pursuant to subsections (8) and (9) of section 46-714. To the extent that any such temporary suspension applies to a geographic area preliminarily considered by the department to have ground water hydrologically connected to the surface water of a fully appropriated

river basin, subbasin, or reach, such temporary suspension shall be superseded by the stays imposed pursuant to subsections (1) and (2) of section 46-714.

(3)(a) If prior to July 16, 2004, (i) the director has made a preliminary determination pursuant to subsection (2) of section 46-656.28 that there is reason to believe that the use of hydrologically connected ground water and surface water in a specific geographic area is contributing to or is in the reasonably foreseeable future likely to contribute to any conflict, dispute, or difficulty listed in such subsection, (ii) the director has not made a determination pursuant to subsection (4) of section 46-656.28 that a joint action plan should not be prepared, and (iii) preparation of a joint action plan pursuant to subsections (5) through (9) of such section has not been completed, the geographic area involved shall become subject to sections 46-713 to 46-719 on July 16, 2004, and the department need not evaluate such geographic area in its first annual report issued pursuant to section 46-713.

(b) For purposes of this subsection and section 46-714 and except as otherwise provided in this section, (i) July 16, 2004, shall result in the imposition in any geographic area subject to this subsection of the stays required by subsections (1) and (2) of section 46-714, (ii) such stays shall be imposed in the manner required by such section, and (iii) July 16, 2004, shall be treated as if it were the date of a departmental preliminary determination pursuant to section 46-713 that such area is a geographic area within which ground water and surface water of a fully appropriated river basin, subbasin, or reach are hydrologically connected. Notwithstanding the other provisions of this subsection, if a temporary suspension in the drilling of certain new water wells has previously been imposed by the affected natural resources district, (A) the stays on construction of new water wells and on the increase in ground water irrigated acres shall be limited in geographic extent to only that part of the affected area within which the temporary suspension was in effect unless the director determines that inclusion of additional area is necessary because ground water and surface water are hydrologically connected in such additional area and (B) the stays on construction of certain new water wells shall not apply to a water well constructed in accordance with the terms of a water well construction permit approved by the district prior to July 16, 2004, unless such well was subject to the district's temporary suspension. If, prior to July 16, 2004, the director has held a hearing on a report issued pursuant to subsection (3) of section 46-656.28 but has not yet determined whether a joint action plan should be prepared, no departmental hearing shall be required pursuant to subsection (4) of section 46-714 before a final determination is made about whether the river basin, subbasin, or reach involved is fully appropriated. If, prior to July 16, 2004, the director has determined pursuant to subsection (4) of section 46-656.28 that a joint action plan should be prepared, such determination shall have the same effect as a final departmental determination pursuant to subsection (5) of section 46-714 that the affected river basin, subbasin, or reach is fully appropriated and no separate determination to that effect shall be required. If, after July 16, 2004, the department determines that all or part of the area subject to this subsection is in an overappropriated river basin, subbasin, or reach, that portion of the area shall thereafter be subject to the provisions of the Nebraska Ground Water Management and Protection Act applicable to an overappropriated river basin, subbasin, or reach and stays that have previously taken effect in accordance with this subsection shall continue in effect as stays for an overappropriated river basin, subbasin, or reach

without additional action or publication of notice by the department. Any temporary suspension in the drilling of certain water wells that has been imposed in the geographic area involved by a natural resources district pursuant to subsection (16) of section 46-656.28 prior to July 16, 2004, shall remain in effect until superseded by the stays imposed pursuant to subsections (1) and (2) of section 46-714.

(4) If, prior to July 16, 2004, preparation of a joint action plan has been completed pursuant to subsections (5) through (9) of section 46-656.28 but the plan has not yet been adopted pursuant to subsection (11) of such section, the department need not evaluate the affected geographic area in its first annual report issued pursuant to section 46-713. The department and the affected natural resources district shall review the completed joint action plan for its compliance with sections 46-715 to 46-717. If the joint action plan is determined to be in compliance with sections 46-715 to 46-717 or if agreement is reached on the revisions necessary to bring it into such compliance, the department and the district shall adopt the plan and implement the controls as provided in section 46-718. If the joint action plan is determined not to be in compliance with sections 46-715 to 46-717 and agreement on the proposed plan or the proposed controls cannot be reached pursuant to section 46-718, section 46-719 shall apply. Except to the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of certain water wells imposed in the affected geographic area by a natural resources district pursuant to subsection (16) of section 46-656.28 shall remain in effect until (a) the department and the affected district have jointly decided to implement the plan, with or without modifications, and controls have been adopted and taken effect or (b) the Interrelated Water Review Board, pursuant to section 46-719, has adopted an integrated management plan for the affected river basin, subbasin, or reach and the controls adopted by the board have taken effect. To the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of water wells shall be superseded by the stays imposed pursuant to subsections (8) and (9) of section 46-714.

(5) If, before July 16, 2004, a joint action plan has been adopted and implemented pursuant to subsections (10) through (12) of section 46-656.28 and is in effect immediately prior to such date, the department need not evaluate the geographic area subject to the plan in the department's first annual report issued pursuant to section 46-713. For purposes of the Nebraska Ground Water Management and Protection Act, (a) the plan adopted shall be considered an integrated management plan adopted pursuant to section 46-718, (b) the management area designated shall be considered an integrated management area or subarea designated pursuant to section 46-718, and (c) the controls adopted shall be considered controls adopted pursuant to section 46-718 and shall remain in effect until amended or repealed pursuant to section 46-718 or 46-719.

Source: Laws 2004, LB 962, § 60; Laws 2009, LB483, § 5.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-724 Contamination; not point source; Director of Environmental Quality; duties; hearing; notice.

If the Director of Environmental Quality determines from the study conducted pursuant to section 46-722 that one or more sources of contamination are not point sources and if a management area, a purpose of which is protection of water quality, has been established which includes the affected area, the Director of Environmental Quality shall consider whether to require the district which established the management area to adopt an action plan as provided in sections 46-725 to 46-729.

If the Director of Environmental Quality determines that one or more of the sources are not point sources and if such a management area has not been established or does not include all the affected area, he or she shall, within thirty days after completion of the report required by section 46-722, consult with the district within whose boundaries the area affected by such contamination is located and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a management area should be designated or whether an existing area should be modified. The hearing shall be held within one hundred twenty days after completion of the report. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services, the Department of Natural Resources, and the appropriate district may offer as evidence any information in their possession which they deem relevant to the purpose of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the Director of Environmental Quality as he or she deems necessary, the director shall determine whether a management area shall be designated.

Source: Laws 1986, LB 894, § 5; Laws 1991, LB 51, § 9; Laws 1993, LB 3, § 18; R.S.1943, (1993), § 46-674.06; Laws 1996, LB 108, § 44; Laws 1996, LB 1044, § 260; Laws 2000, LB 900, § 201; R.S.Supp.,2002, § 46-656.38; Laws 2004, LB 962, § 64; Laws 2007, LB296, § 204.

46-739 Management area; controls authorized; procedure.

(1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area:

(a) It may allocate the amount of ground water that may be withdrawn by ground water users;

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from water wells;

(e) It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of section 46-740;

(f) It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of ground water withdrawals from water wells used for irrigation or other beneficial purposes;

(g) It may require the use of best management practices;

(h) It may require the analysis of water or deep soils for fertilizer and chemical content;

(i) It may impose mandatory educational requirements designed to protect water quality or to stabilize or reduce the incidence of ground water depletion, conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

(j) It may require water quality monitoring and reporting of results to the district for all water wells within all or part of the management area;

(k) It may require district approval of (i) transfers of ground water off the land where the water is withdrawn, (ii) transfers of rights to use ground water that result from district allocations imposed pursuant to subdivision (1)(a) of this section or from other restrictions on use that are imposed by the district in accordance with this section, (iii) transfers of certified water uses or certified irrigated acres between landowners or other persons, or (iv) transfers of certified water uses or certified irrigated acres between parcels or tracts under the control of a common landowner or other person. Such approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area, except that transfers for which permits have been obtained from the Department of Natural Resources prior to July 16, 2004, or pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act shall not be subject to district approval pursuant to this subdivision. If the district adopts rules and regulations pursuant to this subdivision, such regulations shall require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to (A) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated, (B) prevent adverse effects on other ground water users or on surface water appropriators, (C) prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement, and (D) otherwise protect the public interest and prevent detriment to the public welfare. Approval of any transfer of certified water uses or certified irrigated acres under subdivision (1)(k)(iii) or (iv) of this section shall further be subject to the district having complied with the requirements of section 46-739.01;

(l) It may require, when conditions so permit, that new or replacement water wells to be used for domestic or other purposes shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other water wells in the same area;

(m) It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated; and

(n) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a management area was designated.

(2) In adopting, amending, or repealing any control authorized by subsection (1) of this section or sections 46-740 and 46-741, the district's considerations

shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or will improve the administration of the area.

(3) Upon request by the district or when any of the controls being proposed are for the purpose of integrated management of hydrologically connected ground water and surface water, the Director of Natural Resources shall review and comment on the adoption, amendment, or repeal of any authorized control in a management area. The director may hold a public hearing to consider testimony regarding the control prior to commenting on the adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In reviewing and commenting on an authorized control in a management area, the director's considerations shall include, but not be limited to, those enumerated in subsection (2) of this section.

(4) If because of varying ground water uses, varying surface water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to this section may contain different provisions for different categories of ground water use or portions of the management area which differ from each other because of varying climatic, hydrologic, geologic, or soil conditions. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or varying conditions. Except as otherwise provided in this section, if the district adopts different controls for different categories of ground water use, those controls shall be consistent with section 46-613 and shall, for each such category, be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(5) The district may establish different water allocations for different irrigation distribution systems.

(6)(a) The district may establish different provisions for different hydrologic relationships between ground water and surface water.

(b) For management areas a purpose of which is the integrated management of hydrologically connected ground water and surface water, the district may establish different provisions for water wells either permitted or constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells either permitted or constructed on or after the designation date or any other later date or dates established by the district. Permits for construction of new wells not completed by the date of the determination of fully appropriated shall be subject to any conditions imposed by the applicable natural resources district.

(c) For a management area in a river basin or part of a river basin that is or was the subject of litigation over an interstate water compact or decree in which the State of Nebraska is a named defendant, the district may establish different provisions for restriction of water wells constructed after January 1, 2001, if such litigation was commenced before or on May 22, 2001. If such litigation is commenced after May 22, 2001, the district may establish different provisions for restriction of water wells constructed after the date on which

such litigation is commenced in federal court. An appeal from a decision of the district under this subdivision shall be in accordance with the hearing procedures established in the Nebraska Ground Water Management and Protection Act.

(d) Except as otherwise authorized by law, the district shall make a replacement water well as defined in section 46-602, or as further defined in district rules and regulations, subject to the same provisions as the water well it replaces.

(7) If the district has included controls delineated in subdivision (1)(m) of this section in its management plan, but has not implemented such controls within two years after the initial public hearing on the controls, the district shall hold a public hearing, as provided in section 46-712, regarding the controls before implementing them.

(8) In addition to the controls listed in subsection (1) of this section, a district in which a management area has been designated may also adopt and implement one or more of the following measures if it determines that any such measures would help the district and water users achieve the goals and objectives of the management area: (a) It may sponsor nonmandatory educational programs; and (b) it may establish and implement financial or other incentive programs. As a condition for participation in an incentive program, the district may require water users or landowners to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established and shall further condition participation upon satisfaction of the requirements of section 46-739.01.

Source: Laws 1975, LB 577, § 11; Laws 1978, LB 217, § 2; Laws 1979, LB 26, § 4; Laws 1980, LB 643, § 13; Laws 1981, LB 146, § 9; Laws 1982, LB 375, § 19; Laws 1983, LB 506, § 1; Laws 1983, LB 23, § 7; Laws 1984, LB 1071, § 8; Laws 1986, LB 894, § 25; Laws 1993, LB 131, § 30; R.S.1943, (1993), § 46-666; Laws 1996, LB 108, § 31; Laws 1997, LB 877, § 6; Laws 2000, LB 900, § 196; Laws 2001, LB 135, § 2; Laws 2001, LB 667, § 9; R.S.Supp.,2002, § 46-656.25; Laws 2004, LB 962, § 79; Laws 2006, LB 1226, § 27; Laws 2009, LB477, § 6.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-739.01 District; approval of certain transfers or program participation; report of title required; form; written consent of lienholder; rights of lienholder.

(1) Notwithstanding any other provision of law, no district shall approve a transfer of certified water uses or certified irrigated acres or allow a ground water user or landowner to participate in a financial or other incentive program established pursuant to subsection (8) of section 46-739 unless the person seeking such transfer or participation in such program has submitted to the district a report of title issued by an attorney or a registered abstracter, on a form prescribed by the district, reflecting (a) the owner and legal description of the land from which the certified water uses or certified irrigated acres are to be transferred or which is the subject of such program and (b) the existence of all liens, evidenced by the filing of a mortgage, trust deed, or other equivalent

consensual security interest, against the land from which the certified water uses or certified irrigated acres are to be transferred or which is the subject of such program and the name and address of each such lienholder, if any. If the report of title reflects the existence of any lien evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, written consent to such transfer or participation in such program shall be obtained from each such lienholder. The district may assess a fee against the person seeking such transfer or participation in such program to recoup its costs in reviewing the report of title. This subsection does not apply to a transfer of certified water uses or certified irrigated acres resulting from: A one-time transfer of four acres or less; participation in a financial or other incentive program that involves the transfer, purchase, or retirement of four acres or less; or a transfer that involves one landowner on a single tract of land in which there is no reduction or increase in certified water uses or certified irrigated acres and the transfer involves an improvement in irrigation efficiency.

(2) Approval of a transfer of certified water uses or certified irrigated acres or authorization of a ground water user or landowner to participate in such financial or other incentive program by a district shall not affect the rights of any lienholder who is not reflected in the report of title and from whom the required consent was not obtained. Such a lienholder may bring an action against the person seeking such transfer or participation in such program for damages or injunctive or other relief for any injury done to the lienholder's interest in land or use of ground water resulting from such transfer or participation.

(3) This section does not limit the right to resort to other means of review, redress, or relief provided by law.

Source: Laws 2009, LB477, § 7; Laws 2010, LB862, § 3.
Effective date July 15, 2010.

46-739.02 Transfer of right to use ground water; recording; recovery of cost; manner.

An instrument of transfer of the right to use ground water shall be recorded by a natural resources district with the register of deeds in each county in which is situated the real estate, or any part thereof, from which a transfer of certified water uses or certified irrigated acres occurred, in any case in which a transfer of certified water uses or certified irrigated acres has been approved by such district. The instrument of transfer of the right to use ground water shall include a description of the real estate to and from which the certified water uses or certified irrigated acres were transferred, the nature of the transfer, and the date on which the transfer occurred. The district may recover the cost of filing an instrument of transfer of the right to use ground water from the person seeking the transfer. The instrument of transfer of the right to use ground water shall be executed, acknowledged, and recorded in the same manner as conveyances of real estate.

Source: Laws 2009, LB477, § 8.

46-739.03 Natural resources district determination; effect.

The determination of certified water uses or certified irrigated acres by a natural resources district shall not affect the allocations of ground water established under section 46-740.

Source: Laws 2009, LB477, § 9.

46-740 Ground water allocation; limitations and conditions.

(1) If allocation is adopted for use of ground water for irrigation purposes in a management area, the permissible withdrawal of ground water shall be allocated equally per irrigated acre except as permitted by subsections (4) through (6) of section 46-739. Such allocation shall specify the total number of acre-inches that are allocated per irrigated acre per year, except that the district may allow a ground water user to average his or her allocation over any reasonable period of time. A ground water user may use his or her allocation on all or any part of the irrigated acres to which the allocation applies or in any other manner approved by the district.

(2) Except as permitted pursuant to subsections (4) through (6) of section 46-739, if annual rotation or reduction of irrigated acres is adopted for use of ground water for irrigation purposes in a management area, the nonuse of irrigated acres shall be a uniform percentage reduction of each landowner's irrigated acres within the management area or a subarea of the management area. Such uniform reduction may be adjusted for each landowner based upon crops grown on his or her land to reflect the varying consumptive requirements between crops.

(3) Unless an integrated management plan, a rule, or an order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a municipality, within an area determined by the Department of Natural Resources to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Any allocations to a municipality that have been made as of November 1, 2005, shall remain in full force and effect unless changed by the appropriate natural resources district;

(b)(i) For any municipality that has not received an allocation as of November 1, 2005, the minimum annual allocation may be the greater of either the amount of ground water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or the governmental, commercial, and industrial uses of the municipality plus a per capita allowance. Water for commercial and industrial uses may be limited as specified in subdivision (b)(iii) of this subsection.

(ii) The per capita allowance shall be based on the location of the municipality, increasing in equal increments from east to west, and shall not be less than two hundred gallons per person per day at 95 degrees, 19 minutes, 00 seconds longitude and not less than two hundred fifty gallons per person per day at 104 degrees, 04 minutes, 00 seconds longitude. Persons served by a municipality outside of its corporate limits shall be considered part of the municipality's population if such service begins prior to January 1, 2026.

(iii) Prior to January 1, 2026, any new or expanded single commercial or single industrial development served by any municipality within the fully appropriated or overappropriated area which, after July 14, 2006, commences

water use resulting in the consumptive use of water in amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715;

(c) Prior to January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715 and shall not affect the municipal allocations outlined in subdivisions (3)(a) and (b) of this section. Any permanent reduction in consumptive use of water associated with municipal growth, including governmental, industrial, and commercial growth, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such municipality is located; and

(d) To qualify for the exemption specified in subsection (3) of this section, any city of the metropolitan class, city of the primary class, city of the first class, or city of the second class shall file a conservation plan with the natural resources district, if required by the integrated management plan. Villages and other municipalities smaller than a city of the second class shall not be required to submit a conservation plan to qualify for such exemption.

(4) On and after January 1, 2026, the base amount for an annual allocation to a municipality shall be determined as the greater of either (a) the amount of water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or (b) the greatest annual use prior to January 1, 2026, for uses specified in subdivision (3)(b) of this section plus the per capita allowance described in subdivision (3)(b)(ii) of this section. On and after January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715. Each municipality may be subject to controls adopted pursuant to such section for amounts in excess of the allocations.

(5) Unless an integrated management plan, rule, or order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a nonmunicipal commercial or industrial water user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Prior to January 1, 2026, the minimum annual allocation for a nonmunicipal commercial or industrial user shall be the greater of either (i) the amount specified in a permit issued pursuant to the Industrial Ground Water Regulatory Act or (ii) the amount necessary to achieve the commercial or industrial use, including all new or expanded uses that consume less than twenty-five million gallons annually. Any increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715;

(b) Prior to January 1, 2026, any new or expanded single commercial or industrial development served by a nonmunicipal well within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 which, after July 14, 2006, commences water use resulting in the consumptive use of water in

amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715. This subdivision does not apply to a water user described in this subdivision that is regulated by the Industrial Ground Water Regulatory Act and the United States Nuclear Regulatory Commission;

(c) On and after January 1, 2026, the base amount for an annual allocation to a nonmunicipal commercial or industrial user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 shall be the amount specified in subdivision (5)(a) or (b) of this section;

(d) On and after January 1, 2026, increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715; and

(e) Any reduction in consumptive use associated with new nonmunicipal industrial or commercial uses of less than twenty-five million gallons, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such nonmunicipal industrial or commercial user is located.

Source: Laws 1982, LB 375, § 12; Laws 1991, LB 51, § 5; Laws 1993, LB 439, § 3; R.S.1943, (1993), § 46-673.10; Laws 1996, LB 108, § 32; Laws 2001, LB 135, § 3; R.S.Supp.,2002, § 46-656.26; Laws 2004, LB 962, § 80; Laws 2006, LB 1226, § 28.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.
Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-753 Water Resources Trust Fund; created; use; investment; matching funds required; when.

(1) The Water Resources Trust Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated thereto by the Legislature, transfers authorized under section 46-2,137, and such funds, fees, donations, gifts, or bequests received by the Department of Natural Resources from any federal, state, public, or private source for expenditure for the purposes described in the Nebraska Ground Water Management and Protection Act. Money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be administered by the department. The department shall adopt and promulgate rules and regulations regarding the allocation and expenditure of money from the fund.

(3) Money in the fund may be expended by the department for costs incurred by the department, by natural resources districts, or by other political subdivisions in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with section 46-713, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with section 46-713, (c) developing or imple-

menting integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

(4) Except for funds paid to a political subdivision for forgoing or reducing its own water use or for implementing projects or programs intended to aid the state in complying with an interstate water compact or decree or other formal state contract or agreement, a political subdivision that receives funds from the fund shall provide, or cause to be provided, matching funds in an amount at least equal to twenty percent of the amount received from the fund by that natural resources district or political subdivision. The department shall monitor programs and activities funded by the fund to ensure that the required match is being provided.

Source: Laws 2004, LB 962, § 93; Laws 2010, LB1057, § 4.
Effective date April 6, 2010.

Cross References

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

46-754 Interrelated Water Management Plan Program; created; grants; commission; duties; use.

The Interrelated Water Management Plan Program is created for the purpose of facilitating and funding the duties of districts arising under the Nebraska Ground Water Management and Protection Act. The program shall function as a grant program administered by the Nebraska Natural Resources Commission and the Department of Natural Resources upon recommendations of the commission using funds appropriated for the program. The commission shall develop guidelines and limitations for grant requests for funding such district's duties, including studies required to carry out those duties. Grant requests shall be made to the commission for review in a manner and form prescribed by the commission. The amounts requested and approved shall be supported by a minimum local revenue match comprising twenty percent of the total project cost. The Director of Natural Resources shall expend funds to implement the commission's recommendations for fiscal support under the program only upon the commission's approval.

Source: Laws 2006, LB 1226, § 20.

ARTICLE 10

RURAL WATER DISTRICT

Section
46-1011. Plans and specifications; filing; approval; benefit units; water sale.
46-1018. Board; powers and duties; compensation; budget; audit; reports.

46-1011 Plans and specifications; filing; approval; benefit units; water sale.

Plans and specifications for any proposed improvement authorized by sections 46-1001 to 46-1020 shall be filed with the director, the Department of Health and Human Services, and the secretary of the district. No construction of any such improvement shall begin until the plans and specifications for such improvement have been approved by the director and the Department of Health and Human Services, except that if the improvement involves a public water

system as defined in section 71-5301, only the Department of Health and Human Services shall be required to review the plans and specifications for such improvement and approve the same if in compliance with Chapter 71, article 53, and departmental regulations adopted thereunder.

The total benefits of any such improvement shall be divided into a suitable number of benefit units. Each landowner within the district shall subscribe to a number of such units in proportion to the extent he or she desires to participate in the benefits of the improvements. As long as the capacity of the district's facilities permits, participating members of the district may subscribe to additional units upon payment of a unit fee for each such unit. Owners of land located within the district who are not participating members may subscribe to such units as the board in its discretion may grant, and upon payment of the unit fee for each such unit shall be entitled to the same rights as original participating members. If the capacity of the district's facilities permits, the district may sell water to persons engaged in hauling water and to any political subdivision organized under the laws of the State of Nebraska.

Source: Laws 1967, c. 279, § 11, p. 752; Laws 1979, LB 546, § 2; Laws 1996, LB 1044, § 262; Laws 2000, LB 900, § 232; Laws 2001, LB 667, § 10; Laws 2007, LB296, § 205.

46-1018 Board; powers and duties; compensation; budget; audit; reports.

It shall be the duty of the chairperson of the board of directors to keep in repair such works as are constructed by the district as authorized in sections 46-1001 to 46-1020 and to operate such works, all as directed by the board. Such works shall be operated in conformance with the rules and regulations of the Department of Health and Human Services relating to water supply systems. The chairperson and all persons who may perform any service or labor as provided in sections 46-1001 to 46-1020 shall be paid such just and reasonable compensation as may be allowed by the board of directors, and such board shall annually prepare an estimated budget for the coming year, adjust water rates, if necessary to produce sufficient revenue required by such budget, cause an annual audit of the district's records and accounts to be made, and make a report on such matters at each annual meeting.

Source: Laws 1967, c. 279, § 18, p. 755; Laws 1996, LB 1044, § 263; Laws 2007, LB296, § 206.

ARTICLE 11

CHEMIGATION

Section
46-1121. Fees; Chemigation Costs Fund; created; investment; annual permits; renewal.

46-1121 Fees; Chemigation Costs Fund; created; investment; annual permits; renewal.

(1) The fee for initial application for a permit or special permit shall be thirty dollars payable to the district. Twenty-five dollars of the fee shall be retained by the district and five dollars paid by the district to the department.

The annual fee for renewal of a permit or special permit shall be ten dollars paid to the district. Two dollars of the annual fee shall be paid by the district to the department.

All fees shall be used by the district and the department to administer the Nebraska Chemigation Act. The department's fee shall be credited to the Chemigation Costs Fund which is hereby created. All fees collected by the department pursuant to the act shall be remitted to the State Treasurer for credit to the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Chemigation Costs 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) All permits issued pursuant to sections 46-1117 and 46-1117.01 shall be annual permits and shall expire each year on June 1. A permit may be renewed each year upon payment of the annual renewal fee and completion of a form provided by the district which lists the names of all chemicals used in chemigation the previous year. Once a permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit including an inspection and payment of the initial application fee.

Source: Laws 1986, LB 284, § 21; Laws 1987, LB 146, § 5; Laws 1988, LB 1046, § 3; Laws 1995, LB 7, § 43; Laws 2009, First Spec. Sess., LB3, § 21.
Effective date November 21, 2009.

Cross References

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

ARTICLE 12

WATER WELL STANDARDS AND CONTRACTORS' LICENSING

Section

Section
46-1226. Repealed. Laws 2007, LB 463, § 1319.
46-1227. Department; well and equipment standards; adopt rules and regulations.
46-1227.01. Activities subject to standards; contractor, supervisor, and technician authority; landowner rights.
46-1229. License required; application; qualifications.
46-1230. Licensees; proof of insurance.
46-1231. License; application; qualifications.
46-1232. Repealed. Laws 2007, LB 463, § 1319.
46-1233. Water well construction or decommissioning; equipment installation or repair; supervision required.
46-1233.01. Repealed. Laws 2007, LB 463, § 1319.
46-1235. License; disciplinary actions; grounds.
46-1235.01. Repealed. Laws 2007, LB 463, § 1319.
46-1235.02. Repealed. Laws 2007, LB 463, § 1319.
46-1236. Repealed. Laws 2007, LB 463, § 1319.
46-1237. Repealed. Laws 2007, LB 463, § 1319.
46-1237.01. Repealed. Laws 2007, LB 463, § 1319.
46-1237.02. Repealed. Laws 2007, LB 463, § 1319.
46-1237.03. Repealed. Laws 2007, LB 463, § 1319.
46-1238. License; when required; action to enjoin activities.
46-1239. Unauthorized employment; construction, decommissioning, or installation without license; criminal penalty; civil penalty.
46-1240. Failure to comply with standards; criminal penalty; civil penalty; action to enjoin.
46-1240.02. Repealed. Laws 2007, LB 463, § 1319.
46-1240.03. Repealed. Laws 2007, LB 463, § 1319.
46-1240.04. Repealed. Laws 2007, LB 463, § 1319.
46-1240.05. Repealed. Laws 2007, LB 463, § 1319.
46-1241. Water well log required; contents.

46-1201 Act, how cited.

Sections 46-1201 to 46-1241 shall be known and may be cited as the Water Well Standards and Contractors' Practice Act.

Source: Laws 1986, LB 310, § 1; Laws 1991, LB 51, § 18; Laws 1993, LB 131, § 38; Laws 1994, LB 981, § 9; Laws 1996, LB 1241, § 2; Laws 2001, LB 133, § 1; Laws 2007, LB463, § 1143.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1202 Purposes of act.

The purposes of the Water Well Standards and Contractors' Practice Act are to: (1) Provide for the protection of ground water through the licensing and regulation of water well contractors, pump installation contractors, water well drilling supervisors, pump installation supervisors, water well monitoring technicians, and natural resources ground water technicians in the State of Nebraska; (2) protect the health and general welfare of the citizens of the state; (3) protect ground water resources from potential pollution by providing for proper siting and construction of water wells and proper decommissioning of water wells; and (4) provide data on potential water supplies through well logs which will promote the economic and efficient utilization and management of the water resources of the state.

Source: Laws 1986, LB 310, § 2; Laws 1994, LB 981, § 10; Laws 2001, LB 133, § 2; Laws 2001, LB 667, § 11; Laws 2007, LB463, § 1144.

46-1203 Definitions, where found.

For purposes of the Water Well Standards and Contractors' Practice Act, unless the context otherwise requires, the definitions found in sections 46-1204.01 to 46-1216 shall be used.

Source: Laws 1986, LB 310, § 3; Laws 1991, LB 51, § 19; Laws 1993, LB 131, § 39; Laws 1994, LB 981, § 11; Laws 1996, LB 1241, § 3; Laws 2001, LB 133, § 3; Laws 2007, LB463, § 1145.

46-1204.01 Abandoned water well, defined.

Abandoned water well means any water well (1) the use of which has been accomplished or permanently discontinued, (2) which has been decommissioned as described in the rules and regulations of the Department of Health and Human Services, and (3) for which the notice of abandonment required by subsection (2) of section 46-602 has been filed with the Department of Natural Resources by the licensed water well contractor or licensed pump installation contractor who decommissioned the water well or by the water well owner if the owner decommissioned the water well.

Source: Laws 1994, LB 981, § 12; Laws 1996, LB 1044, § 264; Laws 2000, LB 900, § 234; Laws 2001, LB 667, § 12; Laws 2003, LB 245, § 7; Laws 2007, LB296, § 207; Laws 2007, LB463, § 1146.

46-1205 Board, defined.

Board means the Water Well Standards and Contractors' Licensing Board.

Source: Laws 1986, LB 310, § 5; Laws 2007, LB463, § 1147.

46-1205.01 Licensed natural resources ground water technician, defined.

Licensed natural resources ground water technician means a natural resources ground water technician who has taken a training course, passed an examination based on the training course, and received a license from the department indicating that he or she is a licensed natural resources ground water technician.

Source: Laws 2001, LB 133, § 4; Laws 2007, LB463, § 1148.

46-1207 Department, defined.

Department shall mean the Department of Health and Human Services.

Source: Laws 1986, LB 310, § 7; Laws 1996, LB 1044, § 265; Laws 2007, LB296, § 208.

46-1207.01 Illegal water well, defined; landowner; petition for reclassification; when.

(1) Illegal water well means any water well which has not been properly decommissioned and which meets any of the following conditions:

(a) The water well is in such a condition that it cannot be placed in active or inactive status;

(b) Any necessary operating equipment has been removed and the well has not been placed in inactive status;

(c) The water well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;

(d) The water well was constructed after October 1, 1986, but not constructed by a licensed water well contractor or by an individual on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode;

(e) The water well poses a health or safety hazard;

(f) The water well is an illegal water well in accordance with section 46-706; or

(g) The water well has been constructed after October 1, 1986, and such well is not in compliance with the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) Whenever the department classifies a water well as an illegal water well, the landowner may petition the department to reclassify the water well as an active status water well, an inactive status water well, or an abandoned water well.

Source: Laws 1994, LB 981, § 15; Laws 1996, LB 108, § 76; Laws 2004, LB 962, § 98; Laws 2007, LB463, § 1149.

46-1208 Installation of pumps and pumping equipment, defined.

Installation of pumps and pumping equipment shall mean the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including connecting all wiring to the first control and all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Source: Laws 1986, LB 310, § 8; Laws 1993, LB 131, § 40; Laws 2006, LB 508, § 4.

46-1209 Licensed pump installation contractor, defined.

Licensed pump installation contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells.

Source: Laws 1986, LB 310, § 9; Laws 2001, LB 667, § 13; Laws 2007, LB463, § 1150.

46-1210 Licensed pump installation supervisor, defined.

Licensed pump installation supervisor means any individual who has obtained a license from the department and who is engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor.

Source: Laws 1986, LB 310, § 10; Laws 2001, LB 667, § 14; Laws 2007, LB463, § 1151.

46-1212 Water well, defined.

Water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or

injecting fluid as defined in section 81-1502 into the underground water reservoir. Water well shall not include any excavation described in subdivisions (1)(b) and (1)(c) of section 46-601.01.

Source: Laws 1986, LB 310, § 12; Laws 1993, LB 131, § 41; Laws 2004, LB 962, § 100; Laws 2007, LB701, § 24.

46-1213 Licensed water well contractor, defined.

Licensed water well contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the construction or decommissioning of water wells.

Source: Laws 1986, LB 310, § 13; Laws 2001, LB 667, § 15; Laws 2007, LB463, § 1152.

46-1214 Licensed water well drilling supervisor, defined.

Licensed water well drilling supervisor means any individual who has obtained a license from the department and who is engaged in the construction or decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a water well contractor.

Source: Laws 1986, LB 310, § 14; Laws 2001, LB 667, § 16; Laws 2007, LB463, § 1153.

46-1214.01 Licensed water well monitoring technician, defined.

Licensed water well monitoring technician means any individual who has obtained a license from the department and who is engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment or pumping systems. A licensed water well monitoring technician shall not supervise the work of others.

Source: Laws 1991, LB 51, § 20; Laws 2001, LB 133, § 6; Laws 2001, LB 667, § 17; Laws 2007, LB463, § 1154.

46-1217 Water Well Standards and Contractors' Licensing Board; created; members; qualifications.

(1) There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of ten members, six of whom shall be appointed by the Governor as follows: (a) A licensed water well contractor representing irrigation water well contractors, (b) a licensed water well contractor representing domestic water well contractors, (c) a licensed water well contractor representing municipal and industrial water well contractors, (d) a licensed pump installation contractor, (e) a manufacturer or supplier of water well or pumping equipment, and (f) a holder of a license issued under the Water Well Standards and Contractors' Practice Act employed by a natural resources district. The chief executive officer of the Department of Health and Human Services or his or her designated representative, the Director of Environmental Quality or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director of the Conservation and Survey Division of the University of Nebraska or his or her designated representative shall also serve as members of the board.

(2) Each member shall be a resident of the state. Each industry representative shall have had at least five years of experience in the business of his or her category prior to appointment and shall be actively engaged in such business at the time of appointment and while serving on the board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Practice Act shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade associations of each category.

Source: Laws 1986, LB 310, § 17; Laws 1993, LB 3, § 32; Laws 1993, LB 131, § 42; Laws 1996, LB 1044, § 266; Laws 2000, LB 900, § 235; Laws 2006, LB 508, § 5; Laws 2007, LB296, § 209; Laws 2007, LB463, § 1155.

Cross References

Provisions regarding Water Well Standards and Contractors' Licensing Board, see sections 38-158 to 38-174.

46-1218 Board; terms; vacancy.

(1) The terms of members of the board appointed pursuant to subdivisions (1)(e) and (f) of section 46-1217 shall be extended by one year to five-year terms, and the successors to members appointed pursuant to subdivisions (1)(a) through (f) of such section shall be appointed for five-year terms. No appointed member shall be appointed to serve more than two consecutive full five-year terms.

(2) Each appointed member shall hold office until the expiration of his or her term or until a successor has been appointed and qualified. Any vacancy occurring in the appointed board membership, other than by expiration of a term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

Source: Laws 1986, LB 310, § 18; Laws 2007, LB463, § 1156.

46-1219 Board; meetings; quorum.

(1) Special meetings of the board shall be called upon the written request of any three members of the board. The place of all meetings shall be at the offices of the department, unless otherwise determined by the board.

(2) A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the total number of members of the board shall be deemed to be an act of the board.

Source: Laws 1986, LB 310, § 19; Laws 2007, LB463, § 1157.

46-1219.01 Repealed. Laws 2007, LB 463, § 1319.

46-1220 Repealed. Laws 2007, LB 463, § 1319.

46-1222 Repealed. Laws 2007, LB 463, § 1319.

46-1223 Examinations; requirements; fee; hardship licensing.

(1) Examinations for water well monitoring technicians shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, measuring ground water levels, and water sampling practices and techniques. Examinations for natural resources ground water technicians shall

examine the knowledge of the applicant regarding inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and water sampling practices and techniques. All other examinations shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, current drilling or pump installation practices and techniques, and such other knowledge as deemed appropriate by the board.

(2) An examinee who fails to pass the initial examination may retake such examination without charge at any regularly scheduled examination held within twelve months after failing to pass the initial examination, except that when a national standardized examination is utilized which requires the payment of a fee to purchase such examination, the board shall require the applicant to pay the appropriate examination fee whether an initial examination or a retake of an examination is involved.

(3) In cases of hardship, the board may provide and direct that special arrangements for administering examinations be utilized. The board may also provide for temporary hardship licensing without examination due to the death of the current license holder or for other good cause shown.

Source: Laws 1986, LB 310, § 23; Laws 1991, LB 51, § 21; Laws 1993, LB 131, § 43; Laws 2001, LB 133, § 8; Laws 2007, LB463, § 1159.

Cross References

For provisions regarding licensure under Uniform Credentialing Act, see section 38-101.

46-1223.01 Department; develop program.

The department shall develop a program that is designed to train individuals to become licensed natural resources ground water technicians. Such course shall be developed by the department in consultation with the natural resources districts. Such course shall include inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and taking water samples. Training sessions shall not be less than two hours and shall not exceed eight hours.

Source: Laws 2001, LB 133, § 7; Laws 2007, LB463, § 1160.

46-1224 Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

(1) Except as otherwise provided in subsections (2) through (4) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying out the purposes of the Water Well Standards and Contractors' Practice Act. Such fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Practice Act. Additionally, such fund shall be used to pay any required fee to a contractor which provides the on-line services for registration of water wells. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank

for such registration fees shall be deducted from the portion of the registration fee collected pursuant to this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Fees for credentialing individuals under the Water Well Standards and Contractors' Practice Act shall be established and collected as provided in sections 38-151 to 38-157.

(3) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which is designed and constructed to pump less than fifty gallons per minute and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump fifty gallons per minute or more. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. For a series of two or more water wells completed and pumped into a common carrier, as defined in section 46-601.01, as part of a single site plan for irrigation purposes, the fee set pursuant to this subsection shall be collected for each of the first two such water wells registered. For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Natural Resources with the registration form required by section 46-602 and shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(4) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 1986, LB 310, § 24; Laws 1993, LB 131, § 45; Laws 1994, LB 981, § 17; Laws 1994, LB 1066, § 34; Laws 1999, LB 92, § 4; Laws 2000, LB 900, § 236; Laws 2001, LB 667, § 18; Laws 2003, LB 242, § 8; Laws 2007, LB463, § 1161.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-1225 License renewal; continuing competency required.

The board shall adopt rules and regulations to establish continuing competency requirements for persons licensed under the Water Well Standards and Contractors' Practice Act. Continuing education is sufficient to meet continuing competency requirements.

Source: Laws 1986, LB 310, § 25; Laws 1993, LB 131, § 46; Laws 1996, LB 1044, § 267; Laws 2002, LB 458, § 6; Laws 2002, LB 1021, § 2; Laws 2007, LB463, § 1162.

Cross References

For provisions regarding continuing competency requirements under the Uniform Credentialing Act, see sections 38-145 and 38-146.

46-1226 Repealed. Laws 2007, LB 463, § 1319.

46-1227 Department; well and equipment standards; adopt rules and regulations.

The department, with the approval of the board, shall adopt and promulgate uniform rules and regulations, in accordance with the rules and regulations adopted and promulgated pursuant to sections 46-602 and 81-1505, for the establishment of standards for the (1) construction of water wells, (2) installation of pumps and pumping equipment, and (3) decommissioning water wells. Such rules, regulations, and standards may recognize differing hydrologic and geologic conditions, may recognize differing uses of any developed supplies, and shall be designed to promote efficient methods of operation and prevent water wells from becoming a source of contamination to the aquifer. Such standards shall be applicable whether such activities are carried out by a licensed water well contractor, a licensed pump installation contractor, a licensed water well drilling supervisor, a licensed pump installation supervisor, or any other person. Nothing in this section shall be construed to require that the department adopt, promulgate, or amend rules and regulations for programs in existence on October 1, 1986.

Source: Laws 1986, LB 310, § 27; Laws 1993, LB 3, § 33; Laws 1994, LB 981, § 18; Laws 2007, LB463, § 1163.

Cross References

Old wells not in use, duty to fill, see sections 54-311 and 54-315.

46-1227.01 Activities subject to standards; contractor, supervisor, and technician authority; landowner rights.

(1) All water well construction and monitoring, pump and pumping equipment installation and repair, and decommissioning shall be accomplished following the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) A licensed water well contractor may have supervisory authority over all employees.

(3) A licensed water well drilling supervisor shall work under the supervision of a licensed water well contractor and may have supervisory authority over noncredentialed employees.

(4) A licensed pump installation contractor may have supervisory authority over all employees.

(5) A licensed pump installation supervisor shall work under the supervision of a licensed pump installation contractor and may have supervisory authority over noncredentialed employees.

(6) A licensed water well monitoring technician may work independently and shall not have supervisory authority.

(7) A licensed natural resources ground water technician employed by a natural resources district may work independently and shall not have supervisory authority over any credentialed or noncredentialed persons.

(8) An individual who owns land and uses it for farming, ranching, or agricultural purposes or as his or her place of abode may, on such land, construct a water well, install a pump in a well, or decommission a driven sandpoint well.

Source: Laws 2007, LB463, § 1158.

46-1229 License required; application; qualifications.

Any person desiring to engage in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells shall make initial application for a license to the department in accordance with section 38-130. A license to engage in the construction or decommissioning of water wells or the installation of pumps and pumping equipment shall be issued to every applicant who demonstrates professional competence by successfully passing the examination prescribed in section 46-1223 and otherwise complies with the Uniform Credentialing Act, the Water Well Standards and Contractors' Practice Act, and all standards, rules, and regulations adopted and promulgated pursuant to such acts. Applicants shall receive licenses for any category or combination of categories for which they have successfully passed the required examination.

Source: Laws 1986, LB 310, § 29; Laws 1997, LB 752, § 122; Laws 2001, LB 667, § 19; Laws 2003, LB 242, § 9; Laws 2007, LB463, § 1164.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1230 Licensees; proof of insurance.

Each applicant for an initial license as a licensed water well contractor or as a licensed pump installation contractor shall furnish proof to the department that there is in force a policy of public liability and property damage insurance issued to the applicant in an amount established by the department by rules and regulations sufficient to protect the public interest. Proof of insurance shall be maintained and submitted annually for the term of the active license.

Source: Laws 1986, LB 310, § 30; Laws 2007, LB463, § 1165.

46-1231 License; application; qualifications.

Each water well drilling supervisor, pump installation supervisor, natural resources ground water technician, and water well monitoring technician shall make application for a license in his or her respective trade. A license shall be issued to every applicant who successfully passes the examination for such license and otherwise complies with the Uniform Credentialing Act, the Water Well Standards and Contractors' Practice Act, and all standards, rules, and

regulations adopted and promulgated pursuant to such acts. Any individual employed by a licensed water well contractor or a licensed pump installation contractor who is not deemed to qualify as a licensed water well drilling supervisor or licensed pump installation supervisor may apply for a license in his or her respective trade in the same manner as the licensed water well drilling supervisor or the licensed pump installation supervisor. A supervisor holding a certificate of competence in his or her respective trade on December 1, 2008, shall be deemed to be licensed as a supervisor in such trade on such date. A technician holding a certificate of competence in his or her respective trade on December 1, 2008, shall be deemed to be licensed as a technician in such trade on such date.

Source: Laws 1986, LB 310, § 31; Laws 1991, LB 51, § 22; Laws 1997, LB 752, § 123; Laws 2001, LB 133, § 9; Laws 2003, LB 242, § 10; Laws 2007, LB463, § 1166.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1232 Repealed. Laws 2007, LB 463, § 1319.

46-1233 Water well construction or decommissioning; equipment installation or repair; supervision required.

(1) Any person constructing a water well, installing or repairing pumps onsite, or decommissioning a water well shall do such work in accordance with the rules and regulations developed under the Water Well Standards and Contractors' Practice Act.

(2) A water well shall be constructed, pumps and pumping equipment shall be installed and repaired onsite, and water wells shall be decommissioned by a licensed contractor or supervisor or a person working directly under the supervision of a licensed contractor or supervisor, except that an individual may construct a water well or install and repair pumps and pumping equipment onsite on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. No water well shall be opened or the seal broken by any person other than an owner of the water well unless (a) the opening or breaking of the seal is carried out by a licensed water well monitoring technician or a licensed natural resources ground water technician, (b) the opening or breaking of the seal is carried out by a licensed operator of a public water system in the course of his or her employment or someone under his or her supervision, or (c) a state electrical inspector in the course of his or her employment.

(3) For purposes of this section, supervision means the ready availability of the person licensed pursuant to the Water Well Standards and Contractors' Practice Act for consultation and direction of the activities of any person not licensed who assists in the construction of a water well, the installation of pumps and pumping equipment, or decommissioning of a water well. Contact with the licensed contractor or supervisor by telecommunication shall be sufficient to show ready availability.

Source: Laws 1986, LB 310, § 33; Laws 1996, LB 1241, § 5; Laws 2001, LB 667, § 20; Laws 2007, LB463, § 1167.

46-1233.01 Repealed. Laws 2007, LB 463, § 1319.

46-1235 License; disciplinary actions; grounds.

In cases other than those relating to failure to meet the requirements for an initial license, the department may deny, refuse renewal of, suspend, or revoke licenses or may take other disciplinary action in accordance with section 38-196 for the grounds found in sections 38-178 and 38-179 and for any of the following acts or offenses:

(1) Violation of the Water Well Standards and Contractors' Practice Act or any standards, rules, or regulations adopted and promulgated pursuant to such act;

(2) Conduct or practices detrimental to the health or safety of persons hiring the services of the licensee or of members of the general public;

(3) Practice of the trade while the license to do so is suspended or practice of the trade in contravention of any limitation placed upon the license;

(4) Failing to file a water well registration required by subsection (1), (2), (3), (4), or (5) of section 46-602 or failing to file a notice required by subsection (7) of such section; or

(5) Failing to file a properly completed notice of abandonment of a water well required by subsection (8) of section 46-602.

Source: Laws 1986, LB 310, § 35; Laws 1993, LB 131, § 47; Laws 1996, LB 1044, § 268; Laws 2001, LB 667, § 21; Laws 2003, LB 245, § 8; Laws 2007, LB296, § 210; Laws 2007, LB463, § 1168.

46-1235.01 Repealed. Laws 2007, LB 463, § 1319.

46-1235.02 Repealed. Laws 2007, LB 463, § 1319.

46-1236 Repealed. Laws 2007, LB 463, § 1319.

46-1237 Repealed. Laws 2007, LB 463, § 1319.

46-1237.01 Repealed. Laws 2007, LB 463, § 1319.

46-1237.02 Repealed. Laws 2007, LB 463, § 1319.

46-1237.03 Repealed. Laws 2007, LB 463, § 1319.

46-1238 License; when required; action to enjoin activities.

Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such activities, in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices, in addition to the other penalties provided in the Uniform Credentialing Act or the Water Well Standards and Contractors' Practice Act, may be enjoined from continuing such activities.

Source: Laws 1986, LB 310, § 38; Laws 1991, LB 51, § 24; Laws 1996, LB 1241, § 6; Laws 2001, LB 667, § 22; Laws 2006, LB 508, § 7; Laws 2007, LB463, § 1169.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1239 Unauthorized employment; construction, decommissioning, or installation without license; criminal penalty; civil penalty.

Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such activities, in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells is guilty of a Class II misdemeanor or subject to a civil penalty of not more than one thousand dollars for each day the violation occurs.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 39; Laws 1996, LB 1241, § 7; Laws 1997, LB 30, § 5; Laws 2001, LB 667, § 23; Laws 2006, LB 508, § 8; Laws 2007, LB463, § 1170.

46-1240 Failure to comply with standards; criminal penalty; civil penalty; action to enjoin.

Any person who engages in or any person who employs or uses a person who engages in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices or who fails to decommission or decommissions an illegal water well without complying with the standards adopted and promulgated pursuant to the Water Well Standards and Contractors' Practice Act shall be guilty of a Class III misdemeanor or subject to a civil penalty of not more than five hundred dollars for each day an intentional violation occurs and may be enjoined from continuing such activity, including a mandatory injunction.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State

Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 40; Laws 1991, LB 51, § 25; Laws 1993, LB 131, § 55; Laws 1994, LB 981, § 20; Laws 1996, LB 1241, § 8; Laws 1997, LB 30, § 6; Laws 2001, LB 667, § 24; Laws 2007, LB463, § 1171.

46-1240.02 Repealed. Laws 2007, LB 463, § 1319.

46-1240.03 Repealed. Laws 2007, LB 463, § 1319.

46-1240.04 Repealed. Laws 2007, LB 463, § 1319.

46-1240.05 Repealed. Laws 2007, LB 463, § 1319.

46-1241 Water well log required; contents.

Any owner of a water well or a licensed water well contractor who engages in an act of or the business of constructing a water well shall keep and maintain an accurate well log of the construction of each such water well. The well log shall be available to the department for inspection and copying during reasonable hours or the regular business hours of the contractor.

The well log shall include the following information:

(1) Legal description of the water well;

(2) Description and depth of geologic materials encountered;

(3) Depth and diameter or dimension of constructed water well and test hole;

(4) Depth and diameter or dimension of excavated hole if applicable;

(5) Depth of formation stabilizer or gravel pack and size of particles if used;

(6) Depth and thickness of grout or other sealing material if applicable;

(7) Casing information, including length, inside diameter, wall thickness, and type of material if applicable;

(8) Screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable;

(9) Static water level;

(10) Water level when pumped at the designated rate, giving the rate of pumping and amount of time pumped, if applicable;

(11) Yield of water well in gallons per minute or gallons per hour if applicable;

(12) Signature of water well contractor;

(13) Dates drilling commenced and construction completed;

(14) Intended use of the water well;

(15) Name and address of the owner;

(16) Identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law;

(17) Name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Practice Act of any person, other than the owner of the water well, who constructed the water well; and

(18) Other data as the board reasonably requires.

Source: Laws 1986, LB 310, § 41; Laws 1993, LB 131, § 62; Laws 2001, LB 667, § 25; Laws 2007, LB463, § 1172.

ARTICLE 14

DECOMMISSIONING WATER WELLS

Section
46-1403. Water Well Decommissioning Fund; created; use; investment.
46-1404. Water Well Decommissioning Fund; allocation; rules and regulations.
46-1405. Natural resources district; cost-sharing program; qualification for funding.

46-1403 Water Well Decommissioning Fund; created; use; investment.

There is hereby created the Water Well Decommissioning Fund. The State Treasurer shall credit to the fund for the uses and purposes of sections 46-1401 to 46-1405 such money as is specifically appropriated and such funds, fees, donations, gifts, services, or devises or bequests of real or personal property received by the Department of Natural Resources from any source, federal, state, public, or private, to be used by the department for the purpose of accelerating the decommissioning of illegal water wells. The department shall allocate money from the fund for purposes of sections 46-1401 to 46-1405. The fund shall be exempt from provisions relating to lapsing of appropriations. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Water Well Decommissioning 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 981, § 3; Laws 1995, LB 7, § 44; Laws 2000, LB 900, § 238; Laws 2009, First Spec. Sess., LB3, § 22.
Effective date November 21, 2009.

Cross References

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

46-1404 Water Well Decommissioning Fund; allocation; rules and regulations.

The Water Well Decommissioning Fund shall be allocated by contractual agreement with natural resources districts for the purpose of accelerating the decommissioning of illegal water wells throughout the state. The allocations each fiscal year shall be made by the Department of Natural Resources to natural resources districts in a proportion based on the number of illegal water wells decommissioned in each district in the previous fiscal year which were part of the district's cost-share program to the total number of illegal water wells decommissioned in the state in the previous fiscal year which were part of a district cost-share program. Subsequent allocations for any district which has had a cost-share program for three or more consecutive years shall be based upon the previous three-year average. The allocations may be adjusted on or after March 1 of any year if the Director of Natural Resources determines that one or more districts cannot reasonably be expected to use their full allocation for that fiscal year. Actual disbursement to each district shall be on a reimbursement basis and shall not exceed the amount expended by the district consistent with sections 46-1401 to 46-1405. The Nebraska Natural Resources

Commission shall adopt and promulgate rules and regulations to carry out such sections.

Source: Laws 1994, LB 981, § 4; Laws 2000, LB 900, § 239; Laws 2006, LB 508, § 9.

46-1405 Natural resources district; cost-sharing program; qualification for funding.

Any natural resources district cost-sharing program for decommissioning illegal water wells may qualify for funding pursuant to section 46-1404 if the program:

(1) Applies only to water wells properly decommissioned by licensed water well contractors and pump installation contractors;

(2) Applies to all water wells in the district;

(3) Is available for at least thirty water wells per year; and

(4) Provides at least sixty percent of the costs of decommissioning, up to a maximum of five hundred dollars for all water wells other than hand-dug water wells which shall be eligible for up to a maximum of seven hundred dollars.

A natural resources district may establish maximum cost-share assistance amounts that will be provided to landowners for decommissioning water wells based on well depths and diameters to insure that landowners will be compensated for at least sixty percent of the cost of water well decommissioning.

Source: Laws 1994, LB 981, § 1; Laws 1995, LB 871, § 7; Laws 1996, LB 1241, § 9; Laws 2006, LB 508, § 10.

ARTICLE 16

SAFETY OF DAMS AND RESERVOIRS ACT

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Section

46-1601 Act, how cited.

Sections 46-1601 to 46-1670 shall be known and may be cited as the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 1.

46-1602 Definitions, where found.

For purposes of the Safety of Dams and Reservoirs Act, the definitions found in sections 46-1603 to 46-1634 apply.

Source: Laws 2005, LB 335, § 2.

46-1603 Abandonment, defined.

Abandonment means the process of rendering a dam incapable of impounding by (1) dewatering and filling the reservoir created by such dam with solid materials and (2) creating a stable watercourse around the site.

Source: Laws 2005, LB 335, § 3.

46-1604 Adverse consequences, defined.

Adverse consequences means negative impacts that may occur upstream, downstream, or at locations remote from the dam, including, but not limited to, loss of human life, economic loss including property damage, and lifeline disruption.

Source: Laws 2005, LB 335, § 4.

46-1605 Alterations, defined.

Alterations means alterations to an existing dam that directly affect the safety of the dam or reservoir, as determined by the department, but does not include maintenance and repair of the dam to retain its initial structural integrity.

Source: Laws 2005, LB 335, § 5.

46-1606 Application approval, defined.

Application approval means authorization in writing issued by the department to an owner who has applied to the department for permission to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam and which specifies the conditions or limitations under which work is to be performed by the owner or under which approval is granted.

Source: Laws 2005, LB 335, § 6.

46-1607 Approval to operate, defined.

Approval to operate means authorization in writing issued by the department to an owner who has completed construction, reconstruction, enlargement, or alteration of a dam.

Source: Laws 2005, LB 335, § 7.

46-1608 Appurtenant works, defined.

Appurtenant works include, but are not limited to: Structures such as spillways, either in or separate from the dam; the reservoir and its rim; low-level outlet works; and water conduits including, but not limited to, tunnels, pipelines, or penstocks, either through the dam or its abutments.

Source: Laws 2005, LB 335, § 8.

46-1609 Breach, defined.

Breach means partial removal of a dam creating a channel through the dam to the natural bed elevation of the stream.

Source: Laws 2005, LB 335, § 9.

46-1610 Completion certification, defined.

Completion certification means a statement signed by the design engineer, certifying the completion of work on a dam in conformance with the approved plans and specifications.

Source: Laws 2005, LB 335, § 10.

46-1611 Dam, defined.

(1) Dam means any artificial barrier, including appurtenant works, with the ability to impound water, wastewater, or liquid-borne materials and which (a) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier if it is not across a stream channel or watercourse, to the maximum storage elevation or (b) has an impounding capacity at maximum storage elevation of fifty acre-feet or more, except that any barrier described in this subsection which is not in excess of six feet in height or which has an impounding capacity at maximum storage elevation of not greater than fifteen acre-feet shall be exempt, unless such barrier, due to its location or other physical characteristics, is classified as a high hazard potential dam.

(2) Dam does not include:

(a) An obstruction in a canal used to raise or lower water;

(b) A fill or structure for highway or railroad use, but if such structure serves, either primarily or secondarily, additional purposes commonly associated with dams it shall be subject to review by the department;

(c) Canals, including the diversion structure, and levees; or

(d) Water storage or evaporation ponds regulated by the United States Nuclear Regulatory Commission.

Source: Laws 2005, LB 335, § 11.

46-1612 Days, defined.

Days, for purposes of establishing deadlines, means calendar days, including Sundays and holidays.

Source: Laws 2005, LB 335, § 12.

46-1613 Department, defined.

Department means the Department of Natural Resources.

Source: Laws 2005, LB 335, § 13.

46-1614 Director, defined.

Director means the Director of Natural Resources.

Source: Laws 2005, LB 335, § 14.

46-1615 Emergency, defined.

Emergency includes, but is not limited to, breaches and all conditions leading to or causing a breach, overtopping, or any other condition in a dam that may be construed as unsafe or threatening to life.

Source: Laws 2005, LB 335, § 15.

46-1616 Engineer, defined.

Engineer means a professional engineer licensed under the Engineers and Architects Regulation Act who (1) is competent in areas related to dam investigation, design, construction, and operation for the type of dam being investigated, designed, constructed, or operated, (2) has at least four years of relevant experience in investigation, design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams, and (3) understands adverse consequences and dam failures.

Source: Laws 2005, LB 335, § 16.

Cross References

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

46-1617 Enlargement, defined.

Enlargement means any change in or addition to an existing dam which raises or may raise the normal storage elevation of the water impounded by the dam.

Source: Laws 2005, LB 335, § 17.

46-1618 Hazard potential classification, defined.

Hazard potential classification means classification of dams according to the degree of incremental adverse consequences of a failure or misoperation of a dam but does not reflect on the current condition of a dam, including, but not limited to, safety, structural integrity, or flood routing capacity.

Source: Laws 2005, LB 335, § 18.

46-1619 High hazard potential, defined.

High hazard potential means a hazard potential classification such that failure or misoperation of the dam resulting in loss of human life is probable.

Source: Laws 2005, LB 335, § 19.

46-1620 Incremental, defined.

Incremental means the difference in impacts that would occur due to failure or misoperation of the dam over the impacts that would occur without failure or misoperation of the dam.

Source: Laws 2005, LB 335, § 20.

46-1621 Low hazard potential, defined.

Low hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life and in low economic loss.

Source: Laws 2005, LB 335, § 21.

46-1622 Maximum storage, defined.

Maximum storage means the reservoir storage capacity between the top of dam elevation, or the maximum routed elevation of the probable maximum

flood if lower than the top of dam elevation, and the lowest downstream toe or outside limit elevation of the dam.

Source: Laws 2005, LB 335, § 22.

46-1623 Minimal hazard potential, defined.

Minimal hazard potential means a hazard potential classification such that failure or misoperation of the dam would likely result in no economic loss beyond the cost of the structure itself and losses principally limited to the owner's property.

Source: Laws 2005, LB 335, § 23.

46-1624 Normal storage, defined.

Normal storage means the reservoir storage capacity, excluding flood storage and freeboard allowances.

Source: Laws 2005, LB 335, § 24.

46-1625 Owner, defined.

Owner includes any of the following who or which owns, controls, manages, or proposes to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam:

(1) The United States Government and its departments, agencies, and bureaus;

(2) The state and its departments, institutions, agencies, and political subdivisions;

(3) A municipal or quasi-municipal corporation;

(4) A public utility;

(5) A district;

(6) A person;

(7) A duly authorized agent, lessee, or trustee of any person or entity listed in this section; and

(8) A receiver or trustee appointed by a court for any person or entity listed in this section.

Source: Laws 2005, LB 335, § 25.

46-1626 Person, defined.

Person means any individual, partnership, limited liability company, association, public or private corporation, trustee, receiver, assignee, agent, municipality, other political subdivision, public agency, or other legal entity or any officer or governing or managing body of any public or private corporation, municipality, other political subdivision, public agency, or other legal entity.

Source: Laws 2005, LB 335, § 26.

46-1627 Probable, defined.

Probable means likely to occur and reasonably expected.

Source: Laws 2005, LB 335, § 27.

46-1628 Probable maximum flood, defined.

Probable maximum flood means the most severe flood that is considered probable at a site.

Source: Laws 2005, LB 335, § 28.

46-1629 Reconstruction, defined.

Reconstruction means partial or complete removal and replacement of an existing dam.

Source: Laws 2005, LB 335, § 29.

46-1630 Removal, defined.

Removal means complete elimination of the dam embankment or structure to restore the approximate original topographic contours of the site.

Source: Laws 2005, LB 335, § 30.

46-1631 Reservoir, defined.

Reservoir means any basin which contains or will contain impounded water, wastewater, or liquid-borne materials by virtue of such water, wastewater, or liquid-borne materials having been impounded by a dam.

Source: Laws 2005, LB 335, § 31.

46-1632 Significant hazard potential, defined.

Significant hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life but could result in major economic loss, environmental damage, or disruption of lifeline facilities.

Source: Laws 2005, LB 335, § 32.

46-1633 Storage elevation, defined.

Storage elevation means the elevation of the reservoir surface associated with a level of impoundment, such as maximum storage or normal storage.

Source: Laws 2005, LB 335, § 33.

46-1634 Top of dam elevation, defined.

Top of dam elevation means the maximum design elevation for the top of the dam, including design freeboard allowances but excluding any allowance for settlement due to consolidation of foundation and embankment.

Source: Laws 2005, LB 335, § 34.

46-1635 Purposes of act.

The purposes of the Safety of Dams and Reservoirs Act are to regulate all dams and associated reservoirs for the protection of public health, safety, and welfare and to minimize the adverse consequences associated with the potential failure of such dams and reservoirs.

Source: Laws 2005, LB 335, § 35.

46-1636 Applicability of other law.

The Safety of Dams and Reservoirs Act does not relieve the owner or operator of a dam or reservoir from obtaining any necessary approvals from the department under sections 46-233 to 46-241 or from any other local, state, or federal regulatory authority.

Source: Laws 2005, LB 335, § 36.

46-1637 Regulation by political subdivisions; restrictions; conditions.

(1) Except as provided in subsections (2) and (4) of this section, no city, village, or county may, by ordinance or resolution enacted by the legislative body thereof or adopted by the people, (a) regulate, supervise, or provide for the regulation or supervision of any dams and associated reservoirs or the construction, reconstruction, enlargement, repair, alteration, operation, breach, removal, or abandonment thereof or (b) limit the size or the impounding capacity of a dam if such action would conflict with the power and authority vested in the department pursuant to the Safety of Dams and Reservoirs Act.

(2) A city, village, or county may adopt ordinances or resolutions (a) regulating, supervising, or providing for the regulation or supervision of dams and reservoirs that are not within the state's jurisdiction and are not subject to regulation, owned, or operated by another public agency or body or (b) which apply only to adjacent structures not germane to the safety of the dam, such as, but not limited to, roads and fences.

(3) A city, village, or county may institute overlay zoning precluding construction of structures downstream of a state-permitted dam that is classified as having other than a high hazard potential if a breach-inundation study performed by an engineer, in accordance with generally accepted engineering practice, determines that construction of such structures would require that such dam be reclassified as having a high hazard potential. The owners of such dam shall provide such engineering study as a condition to requesting such overlay zoning.

(4) The Safety of Dams and Reservoirs Act does not preempt or supersede any local zoning ordinances, resolutions, rules, or regulations regarding special use permits enacted by a political subdivision with respect to permit applications for livestock waste control facilities.

Source: Laws 2005, LB 335, § 37.

46-1638 Plans and specifications; responsibility of engineer.

All plans and specifications for construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams and supervision of construction shall be the responsibility of an engineer assisted by qualified engineering geologists and other specialists as necessary.

Source: Laws 2005, LB 335, § 38.

46-1639 Immunity from liability; when.

(1) No action shall be brought against the state, the department, or its agents or employees for the recovery of damages caused by the partial or total failure of any dam by reason of control and regulation thereof pursuant to the Safety of Dams and Reservoirs Act, including, but not limited to, any of the following:

(a) Design and construction application approval of the dam or approval of interim flood routing plans during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment;

(b) The issuance or enforcement of orders relative to maintenance or operation of the dam;

(c) Control and regulation of the dam;

(d) Measures taken to protect against failure of the dam during an emergency, except for negligent acts of the department in assuming control of a dam during an emergency; or

(e) Failure to act.

(2) The Safety of Dams and Reservoirs Act does not relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

Source: Laws 2005, LB 335, § 39.

46-1640 Orders and approval; effect.

The findings and orders of the department, an application approval, and an approval to operate any dam issued by the department are final, conclusive, and binding upon all owners and state agencies, regulatory or otherwise, as to the safety of design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam.

The department may report all dam incidents as defined by the National Performance of Dams Program to the National Performance of Dams Program archive.

Source: Laws 2005, LB 335, § 40.

46-1641 Change of ownership; notification.

The owner of any dam subject to the Safety of Dams and Reservoirs Act shall notify the department of any change in the ownership of the dam. Notification shall be in such form and include such evidence of ownership as the director may by rule and regulation require.

Source: Laws 2005, LB 335, § 41.

46-1642 Livestock waste control facility; approvals required.

An applicant for a permit for a livestock waste control facility which includes a dam, holding pond, or lagoon for which approval by the Department of Natural Resources is not otherwise required but for which approval by the Department of Environmental Quality under section 54-2429 is required shall submit an application for approval along with plans, drawings, and specifications to the Department of Natural Resources and obtain approval from the Department of Natural Resources before beginning construction. The Department of Natural Resources shall approve or deny the dam, holding pond, or lagoon pursuant to this section within sixty days after such application is submitted.

Source: Laws 2005, LB 335, § 42.

46-1643 Administrative or judicial recourse; not affected.

The Safety of Dams and Reservoirs Act does not deprive the owner of any administrative or judicial recourse to the courts to which such owner is entitled under the laws of this state.

Source: Laws 2005, LB 335, § 43.

46-1644 Department; employ personnel.

The department shall employ an engineer and such individuals otherwise qualified by training and experience in the design, inspection, construction, reconstruction, enlargement, repair, alteration, maintenance, operation, breach, removal, or abandonment of dams as necessary to carry out the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 44.

46-1645 Consulting board required; when; liability for costs.

When the safety and technical considerations pertaining to an application approval, an approval to operate, or the plans and specifications of a dam require it, or when requested in writing by the owner, the department shall appoint a consulting board of three or more consultants to report to the department on the safety features involved. The cost and expense of a consulting board, if appointed at the request of an owner, shall be paid by the owner.

Source: Laws 2005, LB 335, § 45.

46-1646 Dams; review and approval required; when.

(1) The department shall review and approve the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of all dams in the state for the protection of life and property as provided in the Safety of Dams and Reservoirs Act.

(2) No person shall construct, reconstruct, enlarge, alter, breach, remove, or abandon any dam without approval by the department.

(3) An owner of a dam who has entered into a cooperative agreement with the department pursuant to subdivision (2)(d) of section 46-1663 shall be deemed to be in compliance with the act.

Source: Laws 2005, LB 335, § 46.

46-1647 Potentially hazardous dams; emergency action plans.

(1) In order to protect life and property, the owner of every high hazard potential dam shall develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dam. In order to protect life and property, the department may require the owners of any significant hazard potential dam to develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dams.

(2) Such emergency action plan shall include, but not be limited to, the following elements:

(a) Emergency notification plan with flowchart;

(b) A statement of purpose;

(c) A project description;

(d) Emergency detection, evaluation, and classification;

(e) General responsibilities;

(f) Preparedness;

(g) Inundation maps or other acceptable description of the inundated area; and

(h) Appendices.

(3) For purposes of evaluating the adequacy of an emergency action plan, the department shall review, evaluate for adequacy, and approve or disapprove each emergency action plan submitted under this section. The department shall accept emergency action plans developed for dams under a federal dam safety program.

(4) If the department determines that a dam constitutes an immediate risk to life or property, the department shall order the owner to take such action as is necessary to remove such risk.

Source: Laws 2005, LB 335, § 47.

46-1648 Right of entry upon private property; when; immunity.

In making any investigation or inspection necessary to enforce or implement the Safety of Dams and Reservoirs Act, the department or its representatives, upon reasonable notice, may enter upon private property of the dam and reservoir owner as necessary. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable for prosecution for trespass when performing their official duties.

Source: Laws 2005, LB 335, § 48.

46-1649 Department; investigations and studies.

(1) The department may investigate and gather or cause the owner to gather such data, including advances made in safety practices elsewhere, as may be needed for a proper review and study of the various features of the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams.

(2) The department may make or cause the owner to make such watershed investigations and studies as are necessary to keep abreast of developments affecting runoff and peak storm discharges in the vicinity of a dam.

(3) The department may make or cause the owner to make such seismic investigations and studies as may be necessary to keep abreast of developments affecting seismic stability of a dam.

Source: Laws 2005, LB 335, § 49.

46-1650 Department; enforcement; powers.

(1) The department may take any administrative or legal action necessary for the enforcement of the Safety of Dams and Reservoirs Act.

(2) An action or proceeding under this section may be initiated whenever any owner or any person acting as an agent of any owner:

(a) Fails to comply with the requirements imposed by the act or by any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act; or

(b) Commits or allows the commission of violations of the act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act.

(3) Any action or proceeding under this section shall be initiated either administratively or in a court in a jurisdiction in which:

(a) The dam, area of hazard potential, or some part thereof exists;

(b) The person named in the complaint has its principal place of business; or

(c) The person named in the complaint resides.

Source: Laws 2005, LB 335, § 50.

46-1651 Rules and regulations.

(1) The department may adopt and promulgate rules and regulations containing standards for the design, inspection, construction, reconstruction, enlargement, alteration, breach, removal, abandonment, and periodic testing of emergency action plans of dams to carry out the purposes of the Safety of Dams and Reservoirs Act. Such rules and regulations may also include, but are not limited to, establishing:

(a) Standards and criteria for the siting and design of dams, considering both existing and projected conditions which may affect the safety of a project during its construction and operational life;

(b) Requirements for operation of dams, including operational plans to be prepared and implemented by owners;

(c) Requirements for monitoring, inspection, and reporting of conditions affecting the safety of dams; and

(d) Requirements for emergency action plans to be prepared and implemented by owners in cooperation with emergency management authorities.

(2) In adopting rules and regulations applicable to dams which may have a high hazard potential or a significant hazard potential, the department may consider:

(a) The state of scientific and technological knowledge and good engineering practices relating to various types of dams;

(b) The economic impact of a failure of a structure upon the state and its citizens; and

(c) The relationship of dams in hydrologic management in the watershed as a whole.

Source: Laws 2005, LB 335, § 51.

46-1652 Construction or enlargement of dam; application for approval; contents.

(1) Construction of any new dam or the enlargement of any dam shall not commence until the owner has applied for and obtained from the department written application approval of plans and specifications.

(2) A separate application for each dam shall be filed with the department upon forms provided by the department. Plans and specifications signed and sealed by the design engineer shall accompany the application.

(3) The application shall provide the following information:

(a) The name and address of the owner;

(b) The name and address of the applicant, if different from the owner;

(c) The name and address of the operator or other person to be contacted regarding arrangements for inspections or other matters associated with the dam;

(d) The location, type, size, purpose, and height of the proposed dam;

(e) The reservoir surface areas and associated storage capacity at elevation intervals not exceeding two feet;

(f) Plans for proposed permanent instrument installations in the dam;

(g) The area of the drainage basin, rainfall records, streamflow records, and flood flow records and estimates, if available;

(h) Maps and design drawings showing plans, elevations, and sections of all principal structures and appurtenant works with other features of the project in sufficient detail, including design analyses, to determine safety, adequacy, and suitability of design;

(i) The estimated construction cost of the dam; and

(j) Such other pertinent information as the department requires.

(4) The department may, when in its judgment it is necessary, also require the following:

(a) Data concerning subsoil and rock foundation conditions and the materials involved in the construction of the dam;

(b) Investigations of, and reports on, subsurface conditions, exploratory pits, trenches and adits, drilling, coring, and geophysical tests to measure in place and in the laboratory the properties and behavior of foundation materials at the dam site;

(c) Investigations and reports on the geology of the dam site, possible geologic hazards, seismic activity, faults, weak seams and joints, availability and quality of construction materials, and other pertinent features; and

(d) Other appropriate information.

(5) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

Source: Laws 2005, LB 335, § 52.

46-1653 Modifications to existing dam; application for approval; contents; exemption.

(1) Before commencing the reconstruction or alteration of a dam or the abandonment, breach, or removal of a dam so that it no longer constitutes a dam, the owner shall file an application and secure the written application approval of the department.

(2) The application shall give such pertinent information or data concerning the dam as may be required by the department.

(3) The application shall give the name and address of the applicant and shall adequately detail, with appropriate references to the existing dam, the proposed reconstruction, alteration, abandonment, breach, or removal of the dam. The application shall be accompanied by plans and specifications signed and sealed by the design engineer. The department may waive any of the requirements of this section if the requirements are unnecessary for the application approval.

(4) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

(5) In case of an emergency in which the department declares that repairs or breaching of the dam are necessary to safeguard life and property, repairs or breaching shall be started immediately by the owner or by the department at the owner's expense. The department shall be notified within twenty-four hours of emergency repairs or breaching when instituted by the owner.

(6) The proposed repairs or breaching shall conform to any orders issued by the department.

Source: Laws 2005, LB 335, § 53.

46-1654 Application approval; issuance; public hearing; notice to department; when.

(1) Approval of applications for which approval under sections 46-233 to 46-242 is not required shall be issued within ninety days after receipt of the completed application plus any extensions of time required to resolve matters diligently pursued by the applicant. At the discretion of the department, one or more public hearings may be held on an application.

(2) Approval of applications under the Safety of Dams and Reservoirs Act, for which approval under sections 46-233 to 46-242 is required, shall not be issued until all pending matters before the department under the Safety of Dams and Reservoirs Act or such sections have been resolved and approved. Approval under the act and approval under such sections shall be issued simultaneously.

(3) Application approval shall be granted with terms, conditions, and limitations necessary to safeguard life and property.

(4) If actual construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is not commenced within the time established by the department, the application approval becomes void, except that the department may, upon written application and for good cause shown, extend the time for commencing construction, reconstruction, enlargement, alteration, breach, removal, or abandonment. If approval under sections 46-233 to 46-242 is also required, the department may not extend the time for commencing construction without following the procedures and granting a similar extension under subsection (2) of section 46-238.

(5) Written notice shall be provided to the department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or

abandonment is to begin and such other notices shall be given to the department as it may require.

Source: Laws 2005, LB 335, § 54; Laws 2009, LB209, § 2.

46-1655 Fees.

(1) The application for approval of construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam shall be accompanied by a filing fee as established by rule and regulation of the department but not to exceed (a) two hundred dollars for a dam less than twenty-five feet in height, (b) three hundred dollars for a dam twenty-five feet in height to not more than fifty feet in height, and (c) four hundred dollars for a dam in excess of fifty feet in height.

(2) Only one filing fee shall be collected for an enlargement by flashboards, sandbags, earthen levees, gates, or other works, devices, or obstructions which are from time to time to be removed and replaced or opened and shut and thereby operated so as to vary the surface elevation of the reservoir.

(3) A dam subject to the Safety of Dams and Reservoirs Act and for which plans and specifications have been approved prior to September 4, 2005, shall not be required to pay any additional fee or submit an additional application for approval unless such dam requires reconstruction, enlargement, alteration, breach, removal, or abandonment.

(4) An application shall not be considered by the department until the filing fee is received.

(5) Fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Dam Safety Cash Fund.

Source: Laws 2005, LB 335, § 55.

46-1656 Dam Safety Cash Fund; created; use; investment.

The Dam Safety Cash Fund is created. The fund shall consist of fees credited pursuant to section 46-1655 and any money specifically appropriated to the fund by the Legislature. Money in the fund shall not be subject to any fiscal-year limitation or provision for lapse of unexpended balance at the end of any fiscal year or biennium. The fund shall be administered by the department. Money in the fund may be expended by the department for costs incurred by the department in the administration of the Safety of Dams and Reservoirs 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 2005, LB 335, § 56.

Cross References

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

46-1657 New or modified dam; owner; filing requirements; approval to operate; issuance.

(1) Upon completion of a new or reconstructed dam and reservoir or of the enlargement of a dam and reservoir, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter signed and sealed by the design engineer, showing or describing the

work as actually completed. Such supplementary materials may include, but need not be limited to, the following as determined by the department:

(a) A record of all geological boreholes and grout holes and grouting;

(b) A record of permanent location points, benchmarks, and instruments embedded in the structure;

(c) A record of tests of concrete or other material used in the construction, reconstruction, or enlargement of the dam; and

(d) A record of initial seepage flows and embedded instrument readings.

(2) In connection with the enlargement of a dam, the supplementary drawings and descriptive matter need apply only to the new work.

(3) An approval to operate shall be issued by the department upon a finding by the department that the dam is safe to impound within the limitations prescribed in the application approval. No impoundment by the structure shall occur prior to issuance of the approval to operate.

Source: Laws 2005, LB 335, § 57.

46-1658 Alteration of dam; owner; filing requirements; approval to operate; issuance.

(1) Upon completion of the alteration of any dam, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter, as determined by the department, signed and sealed by the design engineer, showing or describing the work as actually completed.

(2) An approval to operate shall be issued upon a finding by the department that the dam is safe to impound within the limitations prescribed in the application approval. Pending issuance of a new or revised approval to operate, the owner of the dam shall not cause the dam to impound beyond the limitations prescribed in the existing application approval.

Source: Laws 2005, LB 335, § 58.

46-1659 Removal, breach, or abandonment of dam; design engineer; duties; department; powers.

(1) Upon completion of the removal, breach, or abandonment of a dam, the design engineer shall file with the department a completion certification.

(2) Before final approval of the removal of a dam is issued, the department may inspect the site of the work and determine that all work was accomplished in substantial conformance with the application approval.

(3) Following the removal of a dam, the department may report such removal to the National Performance of Dams Program and to the National Inventory of Dams.

Source: Laws 2005, LB 335, § 59.

46-1660 Approval to operate; department; powers; hearing; notice.

(1) Each approval to operate issued by the department under the Safety of Dams and Reservoirs Act shall contain such terms and conditions as the department may prescribe.

(2) The department shall revoke, suspend, or amend any approval to operate whenever it determines that the dam constitutes a danger to life and property.

(3) Before any approval to operate is revoked by the department, the department shall hold a public hearing. Written notice of the time and place of the hearing shall be mailed to the owner at least thirty days before the date set for the hearing. Any interested persons may appear at the hearing and present their views and objections to the proposed action.

Source: Laws 2005, LB 335, § 60.

46-1661 Complaint; department; duties; unsafe condition; modification.

(1) Upon receipt of a written complaint alleging that the person or property of the complainant is endangered by the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department shall cause an inspection and investigation to be made unless the data, records, and inspection reports on file are found adequate to make a determination whether the complaint is valid. The complainant shall be provided with a copy of the official report of the inspection and investigation.

(2) If it is found that an unsafe condition exists, the department shall notify the owner of the dam to take such action as is necessary to correct the condition, including breaching or removal of any dam found to be beyond repair.

Source: Laws 2005, LB 335, § 61.

46-1662 Periodic inspections; when; department; powers and duties.

(1) During the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department may make periodic inspections for the purpose of ascertaining compliance with the approved plans and specifications. The department shall require the owner to direct the design engineer to provide adequate supervision during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment and to provide sufficient information to enable the department to determine that conformity with the approved plans and specifications is being attained.

(2) If, after any inspection or investigation, during the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam or at any time prior to issuance of an approval to operate, it is found by the department that modifications or changes are necessary to ensure the safety of the dam, the department shall order the owner to revise his or her plans and specifications. The owner may, pursuant to section 46-1645, request an independent consulting board to review the order of the department.

(3) If at any time during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department finds that the work is not being done in accordance with the approved plans and specifications, the department shall deliver a written notice of noncompliance to the owner. The notice shall be delivered by registered mail or by personal service to the owner, shall state the particulars in which the approved plans and specifications are not being or have not been complied with, and shall order immediate compliance with the approved plans and specifications. The department may order that no further work be done until such compliance has been effected and approved by the department.

(4) Failure to comply with the notice delivered under subsection (3) of this section may cause revocation of application approval by the department. If compliance with the notice has not occurred within sixty days after the date of the notice, the department shall order the incomplete structure removed sufficiently to eliminate any safety hazard to life.

Source: Laws 2005, LB 335, § 62.

46-1663 Record-keeping requirements; maintenance, operation, and inspection; department; powers.

(1) The department shall require owners to keep original records and any modifications to construction available and in good order.

(2) The department may:

(a) Adopt such rules and regulations and issue such orders as necessary to secure adequate maintenance, operation, and inspection by owners;

(b) Require engineering and geologic investigations to safeguard life and property;

(c) Accept approvals and reports of equivalent inspections prepared for dams under a federal dam safety program; and

(d) Enter into cooperative agreements with the owners of dams which are required to comply with a federal dam safety program that has objectives, standards, and requirements that meet or exceed the purposes of the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 63.

46-1664 Safety inspections; when; department; powers and duties.

(1) The department shall inspect dams for the purpose of determining their safety. The normal inspection frequency shall be annually for high hazard potential dams, biennially for significant hazard potential dams, and every five years for low hazard potential dams and every five years or more for minimal hazard potential dams. The department may vary the inspection frequency of some sites based on an evaluation of the site performance history. The department may conduct additional inspections at any time. If serious safety concerns are found by the department during the inspections, the department shall require the owner to conduct tests and investigations sufficient for the department to determine the condition of the dam. After review of the tests or investigations, the department may require modification, removal, or breach of the dam or alteration of operating procedures to restore or improve the safety of the dam and may require installation of instrumentation to monitor the performance of the dam.

(2) The department may report the results of dam inspections that determine unsafe conditions or noncompliance to the National Performance of Dams Program.

Source: Laws 2005, LB 335, § 64.

46-1665 Emergency actions involving a dam; owner; duties; department; duties.

(1) The owner of a dam has the primary responsibility for determining when an emergency exists. When the owner of a dam determines that an emergency

exists involving a dam, the owner shall immediately implement the emergency action plan as required pursuant to section 46-1647. The owner shall immediately notify any persons who may be endangered if the dam should fail, notify emergency management organizations in the area, take necessary remedial action to prevent or mitigate the consequences of failure, and notify the department. The department shall take any remedial action necessary to protect life and property if, in its judgment, either:

(a) The condition of any dam is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation; or

(b) Passing or imminent floods or any other condition threatens the safety of any dam.

(2) In applying the remedial means provided for in this section, the department may in an emergency, with its own forces or by other means at its disposal, do any or all of the following:

(a) Take full charge and control of any dam;

(b) Lower the water level by releasing water from the reservoir;

(c) Completely drain the reservoir;

(d) Perform any necessary remedial or protective work at the site; or

(e) Take such other steps as may be essential to safeguard life and property.

(3) The department shall continue in full charge and control of such dam and its appurtenant works until they are rendered safe or the emergency occasioning the action has ceased and the owner is able to take back full charge and control. The department's taking full charge and control under this section does not relieve the owner of such dam of liability for any negligent acts of such owner.

(4) The department may report emergency actions involving the safety of a dam to the National Performance of Dams Program in a timely manner.

Source: Laws 2005, LB 335, § 65.

46-1666 Violations; penalties.

(1) Violation of the Safety of Dams and Reservoirs Act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act is a Class V misdemeanor. Each day that the violation continues constitutes a separate and distinct offense.

(2) Any person who willfully obstructs, hinders, or prevents the department from performing the duties imposed by the act commits a Class IV misdemeanor.

(3) Any owner or any person who engages in the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam or who knowingly does work on or permits work to be done on the dam without the approval of the department or in violation of the act and who fails to immediately notify the department thereof commits a Class V misdemeanor.

Source: Laws 2005, LB 335, § 66.

46-1667 Notice of violation; orders; procedure.

(1) If the department has reason to believe that an owner or other person is violating or has violated the Safety of Dams and Reservoirs Act, an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department issued or adopted pursuant to the act, the department shall give the owner or person written notice by certified mail that the owner or person appears to be in violation of the act. The owner or other person shall have thirty days from the mailing of such notice to respond or to request a hearing before the department as to why the owner or other person should not be ordered to cease and desist from the violation. The notice shall inform the owner or other person how to request the hearing and the consequences of failure to request a hearing.

(2) If the department finds that an owner or person is constructing, reconstructing, enlarging, altering, breaching, removing, or abandoning a dam without having first obtained the required application approval, the department shall issue a temporary order for the owner or person to cease and desist the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment pending final action by the department pursuant to subsection (3) of this section. The temporary order shall include written notice by certified mail to the owner or person of the time and date set by the department for a hearing to show cause why the temporary order should be vacated.

(3) After a response to a notice or a hearing pursuant to subsection (1) or (2) of this section or after the expiration of time to request a hearing, the department shall issue a decision and final order. The decision and final order may take such form as the department determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, the recommendation of a civil penalty, and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The owner or person affected may appeal the hearing decision as provided in section 61-207.

(4) If the owner or person continues the violation after the department has issued a final decision and order pursuant to subsection (3) of this section or a temporary order pursuant to subsection (2) of this section, the department may apply for a temporary restraining order or preliminary or permanent injunction from a court of competent jurisdiction. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator.

Source: Laws 2005, LB 335, § 67.

46-1668 Violations; civil penalty.

(1) Any person who violates the Safety of Dams and Reservoirs Act or an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department under the act may be assessed a civil penalty in an amount not to exceed five hundred dollars per day for each day the violation continues.

(2) The department shall bring an action to recover a penalty imposed under this section in a court in the jurisdiction in which the violation occurred.

(3) In determining the amount of the penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or willful, the

past conduct of the defendant, whether the defendant has taken steps to cease, remove, or mitigate the violation, and any other relevant information.

Source: Laws 2005, LB 335, § 68.

46-1669 Appeal.

Any affected person aggrieved by any final order or decision made by the director pursuant to the Safety of Dams and Reservoirs Act may appeal the order as provided in section 61-207. For purposes of this section, affected person means the applicant or holder of any approvals under the act and any owner of an estate or interest in or concerning land or water whose interest is or may be impacted in a direct and significant manner by such final order or decision.

Source: Laws 2005, LB 335, § 69.

46-1670 Existing unapproved dams; requirements.

(1) Every owner of a dam subject to the Safety of Dams and Reservoirs Act that was completed prior to September 4, 2005, and not previously approved by the department when departmental approval was otherwise required shall file an application with the department for approval of such dam.

(2) A separate application for each dam shall be filed with the department upon forms supplied by the department and shall include such appropriate information concerning the dam as the department requires.

(3) The department may give notice, by certified mail to the owner's last address of record in the office of the county assessor of the county in which the dam is located, to the owner of dams required under this section to file an application who or which have failed to do so, and a failure to file within sixty days after receipt of such notice shall be punishable as provided in the act.

(4) The department may make inspections of such dams and may require owners of such dams and reservoirs to perform, at the owner's expense, such work or tests as may reasonably be required to disclose information sufficient to enable the department to determine whether to issue an approval to operate or to issue orders directing further work at the owner's expense necessary to safeguard life and property. For this purpose, the department may require an owner to lower the water level of or to drain the reservoir.

(5) If, upon inspection or upon completion to the satisfaction of the department of all work ordered, the department finds that the dam is safe to impound, an approval to operate shall be issued.

(6) If at any time the department finds that the dam is not safe to impound, the department shall notify the owner in writing and shall set a time and place for hearing on the matter. The owner of such dam shall ensure that such dam does not impound following receipt of such notice. Written notice of the time and place of the hearing shall be mailed, at least thirty days prior to the date set for the hearing, to the owner. Any interested person may appear at the hearing and present his or her views and objections to the proposed action.

Source: Laws 2005, LB 335, § 70.

CHAPTER 47
JAILS AND CORRECTIONAL FACILITIES

Article.
1. County Jails. 47-119 to 47-121.01.
5. Sentence Reductions and Credits. 47-502.
6. Community Corrections. 47-619 to 47-639.

ARTICLE 1
COUNTY JAILS

Section
47-119. Repealed. Laws 2009, LB 218, § 14.
47-119.01. Repealed. Laws 2009, LB 218, § 14.
47-120. Care of prisoners; county board or county board of corrections; sheriff; duties; payment.
47-121. Repealed. Laws 2009, LB 218, § 14.
47-121.01. Repealed. Laws 2009, LB 218, § 14.

47-119 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

47-119.01 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

47-120 Care of prisoners; county board or county board of corrections; sheriff; duties; payment.

The county board or county board of corrections serving pursuant to Chapter 23, article 28, shall provide proper quarters and adequate equipment for the preparation and serving of all meals furnished to all prisoners confined in the county jail. The county sheriff or the county board of corrections shall have full charge and control of such services and the county board shall provide for all washing, fuel, lights, and clothing for prisoners, subject to the right of the county to be paid by the city or federal government for city or federal prisoners at actual cost to the county. Supplies of every nature entering into the furnishing of meals, washing, fuel, lights, and clothing to the prisoners confined in the county jail shall be purchased and provided under the direction of the county sheriff or the county board of corrections. Payment for all purchases shall only be made by the county board on the original invoices submitted by the sheriff or the county board of corrections of goods, supplies, and services, setting forth (1) that the invoice correctly describes the goods as to quality and quantity, (2) that the same have been received and are in the custody of the affiant, (3) that they have been or will be devoted exclusively to the purposes authorized in this section, and (4) that the price charged is reasonable and just. Nothing in this section shall be construed to restrict the sheriff or the county board of corrections in employing necessary personnel and from otherwise carrying out the duties required in the operation of the jail.

Source: Laws 1980, LB 628, § 5; Laws 1984, LB 394, § 20; Laws 1989, LB 4, § 6; Laws 1998, LB 695, § 3; Laws 2009, LB218, § 2. Operative date July 1, 2011.

47-121 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

47-121.01 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

ARTICLE 5

SENTENCE REDUCTIONS AND CREDITS

Section
47-502. Person sentenced to jail; sentence reduction.

47-502 Person sentenced to jail; sentence reduction.

Any person sentenced to a city or county jail shall, after the fifteenth day of his or her confinement, have his or her remaining term reduced one day for each day of his or her sentence during which he or she has not committed any breach of discipline or other violation of jail regulations.

Source: Laws 1982, LB 231, § 2; R.S.Supp.,1982, § 23-2811; Laws 1983, LB 180, § 5; Laws 1993, LB 113, § 2; Laws 2010, LB712, § 40. Operative date July 15, 2010.

ARTICLE 6

COMMUNITY CORRECTIONS

Section
47-619. Act, how cited.
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47-630. Supreme Court guidelines.
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47-633. Fees.
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47-635. Act, how cited.
47-636. Legislative findings.
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47-638. Community Corrections Council; contract to conduct study; completion; submission.
47-639. Study; funding.

47-619 Act, how cited.

Sections 47-619 to 47-634 shall be known and may be cited as the Community Corrections Act.

Source: Laws 2003, LB 46, § 31; Laws 2006, LB 1113, § 44; Laws 2010, LB864, § 1.
Effective date July 15, 2010.

47-620 Legislative intent.

It is the intent of the Legislature that the Community Corrections Act:

(1) Provide for the development and establishment of community-based facilities and programs in Nebraska for adult offenders and encourage the use of such facilities and programs by sentencing courts and the Board of Parole as alternatives to incarceration or reincarceration, in order to reduce prison overcrowding and enhance offender supervision in the community; and

(2) Serve the interests of society by promoting the rehabilitation of offenders and deterring offenders from engaging in further criminal activity, by making community-based facilities and programs available to adult offenders while emphasizing offender culpability, offender accountability, and public safety and reducing reliance upon incarceration as a means of managing nonviolent offenders.

Source: Laws 2003, LB 46, § 32; Laws 2006, LB 1113, § 45.

47-621 Terms, defined.

For purposes of the Community Corrections Act:

(1) Community correctional facility or program means a community-based or community-oriented facility or program which (a) is operated either by the state or by a contractor which may be a unit of local government or a nongovernmental agency, (b) may be designed to provide residential accommodations for adult offenders, (c) provides programs and services to aid adult offenders in obtaining and holding regular employment, enrolling in and maintaining participation in academic courses, participating in vocational training programs, utilizing the resources of the community to meet their personal and family needs, obtaining mental health, alcohol, and drug treatment, and participating in specialized programs that exist within the community, and (d) offers community supervision options, including, but not limited to, drug treatment, mental health programs, and day reporting centers;

(2) Council means the Community Corrections Council;

(3) Director means the executive director of the Community Corrections Council;

(4) Nongovernmental agency means any person, private nonprofit agency, corporation, association, labor organization, or entity other than the state or a political subdivision of the state; and

(5) Unit of local government means a county, city, village, or entity established pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

Source: Laws 2003, LB 46, § 33; Laws 2005, LB 538, § 12.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

47-622 Community Corrections Council; created.

The Legislature declares that the policy of the State of Nebraska is that there shall be a coordinated effort to (1) establish community correctional programs across the state in order to divert adult felony offenders from the prison system and (2) provide necessary supervision and services to adult felony offenders

with the goal of reducing the probability of criminal behavior while maintaining public safety. To further such policy, the Community Corrections Council is created. For administrative support and budgetary purposes only, the council shall be within the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 2003, LB 46, § 34; Laws 2005, LB 538, § 13.

47-623 Council; members; terms; expenses.

(1) The council shall include the following voting members:

(a) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;

(b) The Director of Correctional Services;

(c) The chairperson of the Board of Parole;

(d) The Parole Administrator; and

(e) Nine members appointed by the Governor with the approval of a majority of the Legislature, consisting of: One representative from a list of persons nominated by the Nebraska Criminal Defense Attorneys Association; one representative from a list of persons nominated by the Nebraska County Attorneys Association; one full-time officer or employee of a law enforcement agency; one mental health and substance abuse professional; from each congressional district, one provider of community-based behavioral health services; and two at-large members.

(2) The council shall include the following nonvoting members:

(a) The State Court Administrator;

(b) The probation administrator;

(c) Two members of the Legislature, appointed by the Executive Board of the Legislative Council;

(d) Two judges of the district court, appointed by the Chief Justice of the Supreme Court; and

(e) The chief executive officer of the Department of Health and Human Services or his or her designee.

(3) The terms of office for members initially appointed under subdivision (1)(e) of this section shall be three years. Upon completion of the initial terms of such members, the Governor shall appoint (a) a representative from law enforcement, a mental health and substance abuse professional, and one at-large member for terms of one year, (b) a representative of the Nebraska Criminal Defense Attorneys Association, one provider of community-based behavioral health services from the first congressional district, one provider of community-based behavioral health services from the third congressional district, and one at-large member for terms of two years, and (c) a representative of the Nebraska County Attorneys Association and a provider of community-based behavioral health services from the second congressional district for terms of three years. Succeeding appointees shall be appointed for terms of three years. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(4) The council shall by majority vote elect a chairperson from among the members of the council.

(5) The members of the council shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 2003, LB 46, § 35; Laws 2005, LB 538, § 14; Laws 2006, LB 1113, § 46; Laws 2007, LB296, § 215.

47-624 Council; duties.

The council shall:

(1) Develop standards for eligible community correctional facilities and programs in which offenders can participate, taking into consideration the following factors:

(a) Qualifications of staff;

(b) Suitability of programs;

(c) Offender needs;

(d) Probation population;

(e) Parole population; and

(f) Other applicable criminal justice data;

(2) Develop and implement a plan to establish statewide operation and use of a continuum of community correctional facilities and programs;

(3) Develop, in consultation with the probation administrator and the Parole Administrator, standards for the use of community correctional facilities and programs by the Nebraska Probation System and the parole system;

(4) Collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services on the development of additional reporting centers as set forth in section 47-624.01;

(5) Analyze and mandate the consistent use of offender risk assessment tools;

(6) Educate the courts, the Board of Parole, criminal justice system stakeholders, and the general public about the availability and use of community correctional facilities and programs;

(7) Enter into contracts, if necessary, for carrying out the purposes of the Community Corrections Act;

(8) In order to ensure adequate funding for substance abuse treatment programs for probationers, consult with the probation administrator as provided in section 29-2262.07 and develop or assist with the development of programs as provided in subdivision (14) of section 29-2252;

(9) In order to ensure adequate funding for substance abuse treatment programs for parolees, consult with the Office of Parole Administration as provided in section 83-1,107.02 and develop or assist with the development of programs as provided in subdivision (8) of section 83-1,102;

(10) If necessary to perform the duties of the council, hire, contract for, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff;

(11) Study substance abuse and mental health treatment services in and related to the criminal justice system, recommend improvements, and evaluate the implementation of improvements;

(12) Research and evaluate existing community corrections facilities and programs, within the limits of available funding;

(13) Develop standardized definitions of outcome measures for community corrections facilities and programs, including, but not limited to, recidivism, employment, and substance abuse;

(14) Report annually to the Legislature and the Governor on the development and performance of community corrections facilities and programs. The report shall include the following:

(a) A description of community corrections facilities and programs, endorsed by the council, currently serving offenders in Nebraska, which includes the following information:

(i) The target population and geographic area served by each facility or program, eligibility requirements, and the total number of offenders utilizing the facility or program over the past year;

(ii) Services provided to offenders at the facility or in the program;

(iii) The costs of operating the facility or program and the cost per offender; and

(iv) The funding sources for the facility or program;

(b) The progress made in expanding community corrections facilities and programs statewide and an analysis of the need for additional community corrections services;

(c) An analysis of the impact community corrections facilities and programs have on the number of offenders incarcerated within the Department of Correctional Services; and

(d) The recidivism rates and outcome data for probationers, parolees, and problem-solving-court clients participating in community corrections programs;

(15) Grant funds to entities including local governmental agencies, nonprofit organizations, and behavioral health services which will support the intent of the act; and

(16) Perform such other duties as may be necessary to carry out the policy of the state established in the act.

Source: Laws 2003, LB 46, § 36; Laws 2005, LB 538, § 15; Laws 2006, LB 1113, § 47; Laws 2010, LB864, § 2.
Effective date July 15, 2010.

47-624.01 Council; plan for implementation and funding of reporting centers; duties.

(1)(a) The council shall collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services in developing a plan for the implementation and funding of reporting centers in Nebraska.

(b) The plan shall include recommended locations for at least one reporting center in each district court judicial district that currently lacks such a center

and shall prioritize the recommendations for additional reporting centers based upon need.

(c) The plan shall also identify and prioritize the need for expansion of reporting centers in those district court judicial districts which currently have a reporting center but have an unmet need for additional reporting center services due to capacity, distance, or demographic factors.

(2) The council shall submit the reporting center expansion plan to the chairperson of the Sentencing and Recidivism Task Force, as created in Legislative Resolution 171, One Hundred First Legislature, First Session, 2009, by December 1, 2010. The plan shall be implemented as state funding allows until each district court judicial district has at least one reporting center.

Source: Laws 2010, LB864, § 3.
Effective date July 15, 2010.

47-625 Director of the council; duties.

(1) The Governor shall appoint the director of the council.

(2) The director shall:

(a) Supervise, develop, and oversee the actions and proceedings of the council;

(b) Ensure, by working in consultation with the council, consistency between sentencing guidelines and the availability of community correctional facilities and programs;

(c) Administer contracts entered into by the council with community correctional facilities or programs; and

(d) Establish and administer grants, projects, and programs for the operation of the council.

Source: Laws 2003, LB 46, § 37; Laws 2005, LB 538, § 16; Laws 2006, LB 1113, § 49.

47-626 Repealed. Laws 2005, LB 538, § 30.

47-627 Uniform crime data analysis system.

The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice shall develop and maintain a uniform crime data analysis system in Nebraska which shall include, but need not be limited to, the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, admissions to and discharges from the Department of Correctional Services, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. The data shall be categorized by statutory crime. The data shall be collected from the Board of Parole, the State Court Administrator, the Department of Correctional Services, the Office of Parole Administration, the Office of Probation Administration, the Nebraska State Patrol, counties, local law enforcement, and any other entity associated with criminal justice. The council, the director, and the Supreme Court shall have access to such data to implement the Community Corrections Act and to develop guidelines pursuant to section 47-630.

Source: Laws 2003, LB 46, § 39; Laws 2005, LB 538, § 17.

47-630 Supreme Court guidelines.

(1) In order to facilitate the purposes of the Community Corrections Act, the Supreme Court shall by court rule adopt guidelines for sentencing of persons convicted of certain crimes. The guidelines shall provide that courts are to consider community correctional programs and facilities in sentencing designated offenders, with the goal of reducing dependence on incarceration as a sentencing option for nonviolent offenders.

(2) The guidelines shall specify appropriate sentences for the designated offenders in consideration of factors set forth by rule. The Supreme Court may provide that a sentence in accordance with the guidelines constitutes a rebuttable presumption.

(3) The guidelines shall be developed and presented to the Supreme Court for such felony offenses and on such time schedule as the Supreme Court and the council deem appropriate.

(4) The council shall develop and periodically review the guidelines and, when appropriate, recommend amendments to the guidelines.

Source: Laws 2003, LB 46, § 42; Laws 2005, LB 538, § 18.

47-632 Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.

(1) The Community Corrections Uniform Data Analysis Cash Fund is created. Except as provided in subsection (2) of this section, the fund shall be established for administrative purposes only within the Nebraska Commission on Law Enforcement and Criminal Justice, shall be administered by the executive director of the Community Corrections Council, and shall only be used to support operations costs and analysis relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act, including associated information technology projects, as specifically approved by the executive director of the Community Corrections Council. The fund shall consist of money collected pursuant to section 47-633.

(2) Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(3) Any money in the Community Corrections Uniform Data Analysis Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 46, § 44; Laws 2005, LB 426, § 11; Laws 2005, LB 538, § 19; Laws 2007, LB322, § 6; Laws 2009, LB63, § 31; Laws 2009, First Spec. Sess., LB3, § 23.
Effective date November 21, 2009.

Cross References

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

47-633 Fees.

In addition to all other court costs assessed according to law, a uniform data analysis fee of one dollar shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State

Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Community Corrections Uniform Data Analysis Cash Fund.

Source: Laws 2003, LB 46, § 45; Laws 2007, LB322, § 7.

47-634 Receipt of funds by local entity; local advisory committee required; plan required.

For a local entity to receive funds under the Community Corrections Act, the council shall ensure there is a local advisory committee made up of a broad base of community members concerned with the justice system. Submission of a detailed plan including a budget, program standards, and policies as developed by the local advisory committee will be required as set forth by the council. Such funds shall be used for the implementation of the recommendations of the council, the expansion of sentencing options, the education of the public, the provision of supplemental community-based corrections programs, and the promotion of coordination between state and county community-based corrections programs.

Source: Laws 2006, LB 1113, § 48.

47-635 Act, how cited.

Sections 47-635 to 47-639 shall be known and may be cited as the Probation and Parole Services Study Act.

Source: Laws 2007, LB540, § 1.

47-636 Legislative findings.

The Legislature finds that an indepth analysis of the state's adult and juvenile probation systems and services and the parole system and services is needed to assess the efficacy of coordination of such services and administration of the systems for the benefit of the public and the offenders served by the systems.

Source: Laws 2007, LB540, § 2.

47-637 Study of probation and parole service delivery; legislative findings.

The Legislature finds that:

(1) Nebraska's probation and parole services function administratively under different branches of state government. Probation services are currently under the judicial branch while parole is a function of the Department of Correctional Services in the executive branch;

(2) Probation and parole offender-based services share many characteristics relative to: Community supervision of offenders; risk assessment; enforcement of probation and parole terms and conditions; offender accountability; initiation of filings relating to probation and parole violations; providing offender assistance; and appropriate referral for community-based services, including, but not limited to, substance abuse and mental health evaluation and treatment, housing assistance, and workforce development;

(3) Laws 1971, LB 680, which statutorily established probation service delivery in the judicial branch, provided the authority for parole officers to supervise probationers;

(4) Laws 2003, LB 46, provided for the establishment of community-based programs, services, and facilities for both probationers and parolees. Access to and participation in program services and facilities are shared by probationers and parolees. Probation officers and parole officers are assigned supervision of probationers and parolees that concurrently access and participate in community-based programs and services; and

(5) It is appropriate for the Legislature to commission a study of the effectiveness, efficiency, and responsiveness of Nebraska's current administrative assignment of probation and parole service delivery.

Source: Laws 2007, LB540, § 3.

47-638 Community Corrections Council; contract to conduct study; completion; submission.

(1) The Community Corrections Council shall contract with an organization with expertise in the field of corrections policy and administration to conduct a study of Nebraska's probation and parole service delivery system. The study shall:

(a) Identify areas of overlap in offender services provided by probation and parole administration and assess the potential for coordination of state-sponsored services and resources which assist in offender rehabilitation;

(b) Assess the optimum methods for delivery of a seamless continuum of offender services within the current probation and parole systems and analyze whether a single system would be to the advantage of state government and offenders;

(c) Undertake a comparative analysis of other states' probation and parole administrative systems to include, but not be limited to, issues relating to personnel salary and benefits structures, hiring standards, officer caseloads, and officer training curriculum; and

(d) Assess service needs of juveniles on probation, their access to services, and the appropriate minimum array of services to be available for juveniles on probation throughout the state.

(2) The study shall be completed on or before December 31, 2007, and a copy of the completed study shall be submitted to the Chief Justice, the Governor, and the Speaker of the Legislature.

Source: Laws 2007, LB540, § 4.

47-639 Study; funding.

The Legislature shall appropriate funds to the Community Corrections Council for purposes of conducting the study required by section 47-638.

Source: Laws 2007, LB540, § 5.

CHAPTER 48
LABOR

ARTICLE 1
WORKERS' COMPENSATION

PART I—COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

PART II—ELECTIVE COMPENSATION

(a) GENERAL PROVISIONS GOVERNING ELECTION

Section

PART III—MISCELLANEOUS PROVISIONS

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PART VII—COMPENSATION COURT CASH FUND

PART I—COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

48-101.01 Mental injuries and mental illness; first responder; compensation; when.

(1) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder if such first responder:

(a) Establishes, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(b) Establishes, by a preponderance of the evidence, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

(2) For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.

(3) For purposes of this section, first responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Source: Laws 2010, LB780, § 1.
Effective date July 15, 2010.

Note: For applicability of this section, see section 48-1,111.

48-106 Employer; coverage of act; excepted occupations; election to provide compensation.

(1) The Nebraska Workers' Compensation Act shall apply to the State of Nebraska, to every governmental agency created by the state, and, except as provided in this section, to every resident employer in this state and nonresident employer performing work in this state who employs one or more employees in the regular trade, business, profession, or vocation of such employer.

(2) The act shall not apply to:

(a) A railroad company engaged in interstate or foreign commerce;

(b) Service performed by a worker who is a household domestic servant in a private residence;

(c) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs only related employees;

(d) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs unrelated employees unless such service is performed for an employer who during any calendar year employs ten or more unrelated, full-time employees, whether in one or more locations, on each working day for thirteen calendar weeks, whether or not such weeks are consecutive. The act shall apply to an employer thirty days after the thirteenth such week; and

(e) Service performed by a person who is engaged in an agricultural operation, or performed by his or her related employees, when the service performed is (i) occasional and (ii) for another person who is engaged in an agricultural operation who has provided or will provide reciprocal or similar service.

(3) If the employer is the state or any governmental agency created by the state, the exemption from the act under subdivision (2)(d) of this section does not apply.

(4) If the act applies to an employer because the employer meets the requirements of subdivision (2)(d) of this section, all unrelated employees shall be covered under the act and such employees' wages shall be considered for premium purposes.

(5) If an employer to whom the act applies because the employer meets the requirements of subdivision (2)(d) of this section subsequently does not employ ten or more unrelated, full-time employees, such employer shall continue to provide workers' compensation insurance coverage for the employees for the remainder of the calendar year and for the next full calendar year. When the required coverage period has expired, such employer may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(6) An employer who is exempt from the act under subsection (2) of this section may elect to bring the employees of such employer under the act. Such election is made by the employer obtaining a policy of workers' compensation insurance covering such employees. Such policy shall be obtained from a corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state. If such an exempt employer procures a policy of workers' compensation insurance which is in full force and effect at the time of an accident to an employee of such employer, such procurement is conclusive proof of the employer's and employee's election to be bound by the act. Such an exempt employer who has procured a policy of workers' compensation insurance may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(7) Every employer exempted under subdivision (2)(d) of this section who does not elect to provide workers' compensation insurance under subsection (6) of this section shall give all unrelated employees at the time of hiring or at any time more than thirty calendar days prior to the time of injury the following written notice which shall be signed by the unrelated employee and retained by the employer: ''In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease. You should plan accordingly.'' Failure to provide the notice required by this subsection subjects an employer to liability under and inclusion in the act for any unrelated employee to whom such notice was not given.

(8) An exclusion from coverage in any health, accident, or other insurance policy covering a person employed by an employer who is exempt from the act under this section which provides that coverage under the health, accident, or other insurance policy does not apply if such person is entitled to workers' compensation coverage is void as to such person if such employer has not elected to bring the employees of such employer within the act as provided in subsection (6) of this section.

(9) For purposes of this section:

(a) Agricultural operation means (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products or (ii) the ownership, keeping, or feeding of animals for the production of livestock or livestock products;

(b) Full-time employee means a person who is employed to work one-half or more of the regularly scheduled hours during each pay period; and

(c) Related employee means a spouse of an employer and an employee related to the employer within the third degree by blood or marriage. Relationship by blood or marriage within the third degree includes parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same. If the employer is a partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree by blood or marriage, then related employee means any employee related to any such partner, member, or shareholder within the third degree by blood or marriage.

Source: Laws 1913, c. 198, § 6, p. 580; R.S.1913, § 3647; Laws 1917, c. 85, § 1, p. 199; C.S.1922, § 3029; Laws 1927, c. 134, § 1, p. 363; C.S.1929, § 48-106; R.S.1943, § 48-106; Laws 1945, c. 111, § 1, p. 356; Laws 1957, c. 202, § 1, p. 707; Laws 1971, LB 572, § 5; Laws 1972, LB 1298, § 1; Laws 1986, LB 811, § 26; Laws 2002, LB 417, § 1; Laws 2003, LB 210, § 1; Laws 2005, LB 13, § 1; Laws 2009, LB630, § 1; Laws 2010, LB829, § 1.
Effective date April 13, 2010.

48-108 Employer's liability; claim for legal services or disbursements; lien; how established; payment.

No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the Nebraska Workers' Compensation Act shall be an enforceable lien against the amounts to be paid as damages or compensation or be valid or binding in any other respect, unless the same be approved in writing by a judge of the Nebraska Workers' Compensation Court. After such approval, if notice in writing be given the defendant of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation. When the employee's compensation is payable by the employer in periodical installments, the compensation court shall fix, at the time of approval, the proportion of each installment to be paid on account of legal services and disbursements.

Source: Laws 1913, c. 198, § 8, p. 581; R.S.1913, § 3649; C.S.1922, § 3031; C.S.1929, § 48-108; R.S.1943, § 48-108; Laws 1974, LB 732, § 1; Laws 1975, LB 187, § 1; Laws 1978, LB 649, § 1; Laws 1986, LB 811, § 27; Laws 2010, LB908, § 1.
Effective date July 15, 2010.

PART II—ELECTIVE COMPENSATION

(a) GENERAL PROVISIONS GOVERNING ELECTION

48-115 Employee and worker, defined; inclusions; exclusions; waiver; election of coverage.

The terms employee and worker are used interchangeably and have the same meaning throughout the Nebraska Workers' Compensation Act. Such terms

include the plural and all ages and both sexes. For purposes of the act, employee or worker shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written;

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors. Minors for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) through (11) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state;

(3) Volunteer firefighters of any fire department of any rural or suburban fire protection district, city, village, or nonprofit corporation, which fire department is organized under the laws of the State of Nebraska. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any activities that the volunteer firefighters may be directed to do by the chief of the fire department or some person authorized to act for such chief. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first.

Members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department or some person authorized to act for such chief for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of such entity. Members of such fire department after confirmation to membership may be removed by a majority vote of the entity's board of directors or governing

body and thereafter shall not be considered employees of such entity. Firefighters of any fire department of any rural or suburban fire protection district, nonprofit corporation, city, or village shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief;

(4) Members of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which agency, organization, or team is regularly organized under the laws of the State of Nebraska. Such members shall be deemed employees of such agency, organization, or team while in the performance of their duties as members of such agency, organization, or team;

(5) Any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277. Such person shall be deemed an employee of the governmental body or agency for the purposes of the Nebraska Workers' Compensation Act;

(6) Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers who are members of an emergency medical service for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination of such entities under the authority of section 13-303. Such volunteers shall be deemed employees of such entity or combination thereof while in the performance of their duties as ambulance drivers or attendants or out-of-hospital emergency care providers and shall be considered as having entered into and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a hospital or other place where the ambulance they are to use is located or to any activities that the volunteer ambulance drivers or attendants or out-of-hospital emergency care providers may be directed to do by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service. Such volunteers shall be deemed employees of such county, city, village, rural or suburban fire protection district, nonprofit corporation, or combination of such entities until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first. Before such volunteer ambulance drivers or attendants or out-of-hospital emergency care providers are entitled to benefits under the Nebraska Workers' Compensation Act, they shall be recommended by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the governing body of the county, city, or village, or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of such entity or combination thereof. Members of such volunteer ambulance or out-of-hospital emergency care service after confirmation to membership may be removed by majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Volunteer ambulance drivers and attendants and out-of-hospital

emergency care providers for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination thereof shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective county, city, village, or district, but only if directed to do so by the chief or some person authorized to act for such chief;

(7) Members of a law enforcement reserve force appointed in accordance with section 81-1438. Such members shall be deemed employees of the county or city for which they were appointed;

(8) Any offender committed to the Department of Correctional Services who is employed pursuant to section 81-1827. Such offender shall be deemed an employee of the Department of Correctional Services solely for purposes of the Nebraska Workers' Compensation Act;

(9) An executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who owns less than twenty-five percent of the common stock of such corporation or an executive officer of a nonprofit corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who receives annual compensation of more than one thousand dollars from such corporation. Such executive officer shall be an employee of such corporation under the Nebraska Workers' Compensation Act.

An executive officer of a corporation who owns twenty-five percent or more of the common stock of such corporation or an executive officer of a nonprofit corporation who receives annual compensation of one thousand dollars or less from such corporation shall not be construed to be an employee of the corporation under the Nebraska Workers' Compensation Act unless such executive officer elects to bring himself or herself within the provisions of the act. Such election shall be in writing and filed with the secretary of the corporation and with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by the officer and the termination is filed with the insurer or until the insurer ceases to provide coverage for the corporation, whichever occurs first. Any such termination of election shall also be filed with the secretary of the corporation. If insurance is provided through a master policy or a multiple coordinated policy pursuant to the Professional Employer Organization Registration Act on or after January 1, 2012, then such election or termination of election shall also be filed with the professional employer organization. If coverage under the master policy or multiple coordinated policy ceases, then such election shall also be effective for a replacement master policy or multiple coordinated policy obtained by the professional employer organization and shall remain in effect for the new policy as provided in this subdivision. If such an executive officer has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and a health, accident, or other insurance policy covering such executive officer contains an exclusion of coverage if the executive officer is otherwise entitled to workers' compensation coverage, such exclusion is null and void as to such executive officer.

It is the intent of the Legislature that the changes made to this subdivision by Laws 2002, LB 417, shall apply to policies of insurance against liability arising under the act with an effective date on or after January 1, 2003, but shall not apply to any such policy with an effective date prior to January 1, 2003;

(10) Each individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election shall be in writing and filed with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by such person and the termination is filed with the insurer or until the insurer ceases to provide coverage for the business, whichever occurs first. If insurance is provided through a master policy or a multiple coordinated policy pursuant to the Professional Employer Organization Registration Act on or after January 1, 2012, then such election or termination of election shall also be filed with the professional employer organization. If coverage under the master policy or multiple coordinated policy ceases, then such election shall also be effective for a replacement master policy or multiple coordinated policy obtained by the professional employer organization and shall remain in effect for the new policy as provided in this subdivision. If any such person who is actually engaged in the business on a substantially full-time basis has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and a health, accident, or other insurance policy covering such person contains an exclusion of coverage if such person is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such person; and

(11) An individual lessor of a commercial motor vehicle leased to a motor carrier and driven by such individual lessor who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election is made if he or she agrees in writing with the motor carrier to have the same rights as an employee only for purposes of workers' compensation coverage maintained by the motor carrier. For an election under this subdivision, the motor carrier's principal place of business must be in this state and the motor carrier must be authorized to self-insure liability under the Nebraska Workers' Compensation Act. Such an election shall (a) be effective from the date of such written agreement until such agreement is terminated, (b) be enforceable against such self-insured motor carrier in the same manner and to the same extent as claims arising under the Nebraska Workers' Compensation Act by employees of such self-insured motor carrier, and (c) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply to the individual lessor and the self-insured motor carrier with respect to personal injury or death caused to such individual lessor by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease while such election is effective.

Source: Laws 1913, c. 198, § 15, p. 583; R.S.1913, § 3656; Laws 1917, c. 85, § 4, p. 201; Laws 1921, c. 122, § 1, p. 519; C.S.1922, § 3038; Laws 1927, c. 39, § 1, p. 169; C.S.1929, § 48-115; Laws 1933, c.

90, § 1, p. 362; Laws 1941, c. 93, § 1, p. 370; C.S.Supp.,1941, § 48-115; R.S.1943, § 48-115; Laws 1959, c. 222, § 1, p. 782; Laws 1961, c. 233, § 1, p. 689; Laws 1963, c. 282, § 1, p. 841; Laws 1967, c. 291, § 1, p. 793; Laws 1967, c. 289, § 1, p. 788; Laws 1969, c. 391, § 1, p. 1373; Laws 1973, LB 150, § 1; Laws 1973, LB 239, § 2; Laws 1973, LB 25, § 1; Laws 1975, LB 186, § 1; Laws 1976, LB 782, § 14; Laws 1977, LB 199, § 1; Laws 1981, LB 20, § 1; Laws 1983, LB 185, § 1; Laws 1984, LB 776, § 1; Laws 1986, LB 811, § 33; Laws 1986, LB 528, § 6; Laws 1987, LB 353, § 1; Laws 1993, LB 121, § 282; Laws 1994, LB 884, § 63; Laws 1996, LB 43, § 8; Laws 1997, LB 138, § 38; Laws 1997, LB 474, § 2; Laws 1998, LB 1010, § 1; Laws 1999, LB 216, § 1; Laws 2002, LB 417, § 2; Laws 2003, LB 332, § 1; Laws 2005, LB 238, § 1; Laws 2010, LB579, § 14.
Operative date July 15, 2010.

Cross References

Professional Employer Organization Registration Act, see section 48-2701.

(b) RIGHTS AND LIABILITIES OF THIRD PERSONS

48-118 Third-party claims; subrogation.

When a third person is liable to the employee or to the dependents for the injury or death of the employee, the employer shall be subrogated to the right of the employee or to the dependents against such third person. The recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his or her dependents should have been entitled to recover.

Any recovery by the employer against such third person, in excess of the compensation paid by the employer after deducting the expenses of making such recovery, shall be paid forthwith to the employee or to the dependents and shall be treated as an advance payment by the employer on account of any future installments of compensation.

Nothing in the Nebraska Workers' Compensation Act shall be construed to deny the right of an injured employee or of his or her personal representative to bring suit against such third person in his or her own name or in the name of the personal representative based upon such liability, but in such event an employer having paid or paying compensation to such employee or his or her dependents shall be made a party to the suit for the purpose of reimbursement, under the right of subrogation, of any compensation paid.

Source: Laws 1913, c. 198, § 18, p. 585; R.S.1913, § 3659; C.S.1922, § 3041; Laws 1929, c. 135, § 1, p. 489; C.S.1929, § 48-118; R.S.1943, § 48-118; Laws 1963, c. 283, § 1, p. 844; Laws 1986, LB 811, § 37; Laws 1994, LB 594, § 1; Laws 1997, LB 854, § 1; Laws 2000, LB 1221, § 2; Laws 2005, LB 13, § 2; Laws 2005, LB 238, § 2.

48-118.01 Third-party claims; procedure; attorney's fees.

Before making a claim or bringing suit against a third person by the employee or his or her personal representative or by the employer or his or her

workers' compensation insurer, thirty days' notice shall be given to the other potential parties, unless such notice is waived in writing, of the opportunity to join in such claim or action and to be represented by counsel. If a party entitled to notice cannot be found, the clerk of the Nebraska Workers' Compensation Court shall become the agent of such party for giving notice as required in this section. The notice when given to the clerk of the compensation court shall include an affidavit setting forth the facts, including the steps taken to locate such party.

After the expiration of thirty days, for failure to receive notice or other good cause shown, the district court before which the action is pending shall allow either party to intervene in such action, and if no action is pending then the district court in which it could be brought shall allow either party to commence such action. Each party shall have an equal voice in the claim and the prosecution of such suit, and any dispute arising shall be passed upon by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought.

If the employee or his or her personal representative or the employer or his or her workers' compensation insurer join in prosecuting such claim and are represented by counsel, the reasonable expenses and the attorney's fees shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought.

Source: Laws 2005, LB 13, § 23.

48-118.02 Third-party claims; expenses and attorney's fees; apportionment.

If either party after receiving notice under section 48-118.01 fails, by and through his or her attorney, to join in the third-party claim or suit, such party waives any and all claims or causes of action for improper prosecution of the third-party suit or inadequacy of a settlement made in accordance with section 48-118.04. The party bringing the claim or prosecuting the suit is entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney's fees. Such expenses and attorney's fees shall be prorated (1) to the amounts payable to the employer or his or her workers' compensation insurer under the right of subrogation established in section 48-118 and (2) to the amount in excess of such amount payable to the employer or his or her workers' compensation insurer under the right of subrogation. Such expenses and attorney's fees shall be apportioned by the court between the parties as their interests appear at the time of such recovery.

Source: Laws 2005, LB 13, § 24.

48-118.03 Third-party claims; failure to give notice; effect.

If either party makes a claim or prosecutes a third-party action without giving notice to the other party, the party bringing the claim and prosecuting such action shall not deduct expenses or attorney's fees from the amount payable to the other party.

Source: Laws 2005, LB 13, § 25.

48-118.04 Third-party claims; settlement; requirements.

(1) A settlement of a third-party claim under the Nebraska Workers' Compensation Act is void unless:

(a) Such settlement is agreed upon in writing by the employee or his or her personal representative and the workers' compensation insurer of the employer, if there is one, and if there is no insurer, then by the employer; or

(b) In the absence of such agreement, the court before which the action is pending determines that the settlement offer is fair and reasonable considering liability, damages, and the ability of the third person and his or her liability insurance carrier to satisfy any judgment.

(2) If the employee or his or her personal representative or the employer or his or her workers' compensation insurer do not agree in writing upon distribution of the proceeds of any judgment or settlement, the court, upon application, shall order a fair and equitable distribution of the proceeds of any judgment or settlement.

Source: Laws 2005, LB 13, § 26.

48-118.05 Third-party claims; Workers' Compensation Trust Fund; subrogation rights.

In any case in which an injured employee is entitled to benefits from the Workers' Compensation Trust Fund for injuries occurring before December 1, 1997, as provided in section 48-128 and recovery is had against the third party liable to the employee for the injury, the Workers' Compensation Trust Fund shall be subrogated to the rights of the employee against such third party to the extent of the benefits due to him or her or which shall become due to him or her from such fund, subject to the rights of the employer and his or her workers' compensation insurer.

Source: Laws 2005, LB 13, § 27.

(c) SCHEDULE OF COMPENSATION

48-120 Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.

(1)(a) The employer is liable for all reasonable medical, surgical, and hospital services, including plastic surgery or reconstructive surgery but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and includes damage to or destruction of artificial members, dental appliances, teeth, hearing instruments, and eyeglasses, but, in the case of dental appliances, hearing instruments, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases.

(b) Except as provided in section 48-120.04, the compensation court shall establish schedules of fees for such services. The compensation court shall review such schedules at least biennially and adopt appropriate changes when

necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The compensation court shall publish and furnish to the public the fee schedules established pursuant to this subdivision and section 48-120.04. The compensation court may establish and charge a fee to recover the cost of published fee schedules.

(c) Reimbursement for inpatient hospital services provided by hospitals located in or within fifteen miles of a Nebraska city of the metropolitan class or primary class and by other hospitals with fifty-one or more licensed beds shall be according to the Diagnostic Related Group inpatient hospital fee schedule established in section 48-120.04.

(d) A workers' compensation insurer, risk management pool, self-insured employer, or managed care plan certified pursuant to section 48-120.02 may contract with a provider or provider network for medical, surgical, or hospital services. Such contract may establish fees for services different than the fee schedules established under subdivision (1)(b) of this section or established under section 48-120.04. Such contract shall be in writing and mutually agreed upon prior to the date services are provided.

(e) The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service, (ii) the fee established under section 48-120.04, or (iii) the fee contracted under subdivision (1)(d) of this section.

(2)(a) The employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a timeframe established by the compensation court, then the employee has the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer has the right to select the physician. If selection of the initial physician is made by the employee or employer pursuant to this subsection following notice by the employer pursuant to this subsection, the employee or employer shall not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, (i) the employee has the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer is liable for medical, surgical, and hospital services subsequently found to be compensable. If the employer has exercised the right to select a

physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her workers' compensation insurer.

(b) In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation.

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer is not liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

(d) If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee or the employer is unable to select a physician using the procedures provided by this subsection, the selection requirements of this subsection shall not apply as long as the inability to make a selection persists.

(e) The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury requires.

(f) The employer is not responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section. Except as otherwise provided by the Nebraska Workers' Compensation Act, the employer is not liable for medical, surgical, or hospital services or medicines if the employee refuses to allow them to be furnished by the employer.

(3) No claim for such medical treatment is valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the compensation court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. All medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers' compensation insurer, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensa-

tion claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

(5) Whenever the compensation court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the workers' compensation insurer. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(6) The compensation court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital, rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party or the compensation court on its own motion may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician has the same meaning as in section 48-151.

(8) The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(9) Notwithstanding any other provision of this section, a workers' compensation insurer, risk management pool, or self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 48-120.02. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compens-

ability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer is liable for medical, surgical, and hospital services previously provided. The workers' compensation insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

Source: Laws 1913, c. 198, § 20, p. 585; R.S.1913, § 3661; Laws 1917, c. 85, § 6, p. 202; Laws 1919, c. 91, § 1, p. 228; Laws 1921, c. 122, § 1, p. 520; C.S.1922, § 3043; C.S.1929, § 48-120; Laws 1935, c. 57, § 19, p. 197; C.S.Supp.,1941, § 48-120; R.S.1943, § 48-120; Laws 1965, c. 278, § 1, p. 799; Laws 1969, c. 388, § 2, p. 1359; Laws 1969, c. 392, § 1, p. 1376; Laws 1975, LB 127, § 1; Laws 1978, LB 529, § 2; Laws 1979, LB 215, § 1; Laws 1986, LB 811, § 38; Laws 1987, LB 187, § 1; Laws 1992, LB 360, § 13; Laws 1993, LB 757, § 2; Laws 1998, LB 1010, § 2; Laws 1999, LB 216, § 3; Laws 2005, LB 238, § 3; Laws 2007, LB588, § 1; Laws 2009, LB195, § 51.

48-120.02 Managed care plan; certification; application; requirements; conditions; dispute resolution procedure; required; independent medical examiner; compensation court; powers and duties; Attorney General; duties.

(1) Any person or entity may make written application to the Nebraska Workers' Compensation Court to have a plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Nebraska Workers' Compensation Act. Any such person or entity having a relationship with a workers' compensation insurer or any such person or entity having a relationship with an employer for which a plan is being proposed for its own employees shall make full disclosure of such relationship to the compensation court under rules and regulations to be adopted and promulgated by the compensation court. Each application for certification shall be accompanied by a reasonable fee prescribed by the compensation court. A plan may be certified to provide services in a limited geographic area. A certificate is valid for the period the compensation court prescribes unless earlier revoked or suspended pursuant to subsection (4) or (5) of this section. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed plan for providing services as the compensation court may prescribe. The information shall include, but not be limited to:

(a) A list of the names of all providers of medical, surgical, and hospital services under the managed care plan, together with a statement that all licensing, certification, or registration requirements for the providers are current and in good standing in this state or the state in which the provider is practicing; and

(b) A description of the places and manner of providing services under the plan.

(2) The compensation court shall certify a managed care plan if the compensation court finds that the plan:

(a) Proposes to provide quality services that meet uniform treatment standards which may be prescribed by the compensation court and all medical, surgical, and hospital services that may be required by the Nebraska Workers' Compensation Act in a manner that is timely, effective, and convenient for the employee;

(b) Is reasonably geographically convenient to employees it serves;

(c) Provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service;

(d) Provides adequate methods of peer review, utilization review, and dispute resolution to prevent inappropriate, excessive, or not medically necessary treatment and excludes participation in the plan by those individuals who violate treatment standards;

(e) Provides a procedure for the resolution of medical disputes;

(f) Provides aggressive case management for injured employees and provides a program for early return to work and cooperative efforts by the employees, the employer, and the managed care plan to promote workplace health and safety consultative and other services;

(g) Provides a timely and accurate method of reporting to the compensation court necessary information regarding medical, surgical, and hospital service cost and utilization to enable the compensation court to determine the effectiveness of the plan;

(h) Authorizes employees to receive medical, surgical, and hospital services from a physician who is not a member of the managed care plan if such physician has been selected by the employee pursuant to subsection (2) of section 48-120 and if such physician agrees to refer the employee to the managed care plan for any other treatment that the employee may require and agrees to comply with all the rules, terms, and conditions of the managed care plan;

(i) Authorizes necessary emergency medical treatment for an injury which is provided by a provider of medical, surgical, and hospital services who is not a part of the managed care plan;

(j) Does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give employees convenient geographic accessibility to all categories of providers and adequate flexibility to choose a physician to provide medical, surgical, and hospital services from among those who provide services under the plan;

(k) Provides an employee the right to change the physician initially selected to provide medical, surgical, and hospital services under the plan at least once; and

(l) Complies with any other requirement the compensation court determines is necessary to provide quality medical, surgical, and hospital services to injured employees.

The compensation court may accept findings, licenses, certifications, or registrations of other state agencies as satisfactory evidence of compliance with a particular requirement of this subsection.

(3) An employee shall exhaust the dispute resolution procedure of the certified managed care plan prior to filing a petition or otherwise seeking relief from the compensation court on an issue related to managed care. If an employee has exhausted the dispute resolution procedure of the managed care plan, the employee may seek a medical finding by an independent medical examiner pursuant to section 48-134.01. No petition may be filed with the compensation court pursuant to section 48-173 solely on the issue of the reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an independent medical examiner pursuant to section 48-134.01. If the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by a physician who is a member of the managed care plan, the compensation court shall allow the employee to select another physician to furnish further medical services if the physician so selected complies with all rules, terms, and conditions of the managed care plan and refers the employee to the managed care plan for any other treatment that the employee may require.

(4) The compensation court may refuse to certify a managed care plan or a three-judge panel of the compensation court may, after notice and hearing, revoke or suspend the certification of a managed care plan that unfairly restricts direct access within the managed care plan to any category of provider of medical, surgical, or hospital services. Direct access within the managed care plan is unfairly restricted if direct access is denied and the treatment or service sought is within the scope of practice of the profession to which direct access is sought and is appropriate under the standards of treatment adopted by the managed care plan or, in instances where the compensation court has adopted standards of treatment, the standards adopted by the compensation court.

(5) The compensation court may refuse to certify a managed care plan if the compensation court finds that the plan for providing medical, surgical, and hospital services fails to meet the requirements of this section. A three-judge panel of the compensation court may, after notice and hearing, revoke or suspend the certification of a managed care plan if the panel finds that the plan fails to meet the requirements of this section or that service under the plan is not being provided in accordance with the terms of a certified plan.

(6) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing representatives of a certified managed care plan to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke or suspend certification of the plan pursuant to subsection (4) or (5) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the managed care plan unfairly restricts direct access within the plan, that the plan fails to meet the requirements of this section, or that service under the plan is not being provided in accordance with the terms of a certified plan. The presiding judge shall rule on a motion of the Attorney General pursuant to this subsection and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from a suspension or revocation pursuant to subsection (4) or (5) of this section shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas.

(7) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Source: Laws 1993, LB 757, § 3; Laws 1998, LB 1010, § 3; Laws 1999, LB 216, § 4; Laws 2000, LB 1221, § 3; Laws 2005, LB 13, § 3.

48-120.03 Generic drugs; use.

Any person or entity that dispenses medicines and medical supplies, as required by section 48-120, shall dispense the generic drug equivalent unless:

(1) A generic drug equivalent is unavailable; or

(2) The prescribing physician specifically provides in writing that a nongeneric drug must be dispensed.

Source: Laws 2005, LB 13, § 28.

48-120.04 Diagnostic Related Group inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.

(1) This section applies only to hospitals identified in subdivision (1)(c) of section 48-120.

(2) For inpatient discharges on or after January 1, 2008, the Diagnostic Related Group inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(3) For purposes of this section:

(a) Current Medicare Factor is derived from the Diagnostic Related Group Prospective Payment System as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services and means the summation of the following components:

(i) Hospital-specific Federal Standardized Amount, including all wage index adjustments and reclassifications;

(ii) Hospital-specific Capital Standard Federal Rate, including geographic, outlier, and exception adjustment factors;

(iii) Hospital-specific Indirect Medical Education Rate, reflecting a percentage add-on for indirect medical education costs and related capital; and

(iv) Hospital-specific Disproportionate Share Hospital Rate, reflecting a percentage add-on for disproportionate share of low-income patient costs and related capital;

(b) Current Medicare Weight means the weight assigned to each Medicare Diagnostic Related Group as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(c) Diagnostic Related Group means the Diagnostic Related Group assigned to inpatient hospital services using the public domain classification and methodology system developed for the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services; and

(d) Workers' Compensation Factor means the Current Medicare Factor for each hospital multiplied by one hundred fifty percent.

(4) The Diagnostic Related Group inpatient hospital fee schedule shall include at least thirty-eight of the most frequently utilized Medicare Diagnostic Related Groups for workers' compensation with the goal that the fee schedule covers at least ninety percent of all workers' compensation inpatient hospital claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. Rehabilitation Diagnostic Related Groups shall not be included in the Diagnostic Related Group inpatient hospital fee schedule. Claims for inpatient trauma services shall not be reimbursed under the Diagnostic Related Group inpatient hospital fee schedule established under this section until January 1, 2012. Claims for inpatient trauma services prior to January 1, 2012, shall be reimbursed under the fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120 or as contracted pursuant to subdivision (1)(d) of such section. For purposes of this subsection, trauma means a major single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(5) The Diagnostic Related Group inpatient hospital fee schedule shall be established by the following methodology:

(a) The Diagnostic Related Group reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section multiplied by two and one-half;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section plus sixty percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section.

(6) For charges for all other stays or services that are not on the Diagnostic Related Group inpatient hospital fee schedule or are not contracted for under subdivision (1)(d) of section 48-120, the hospital shall be reimbursed under the schedule of fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120.

(7) Each hospital shall assign and include a Diagnostic Related Group on each workers' compensation claim submitted. The workers' compensation insurer, risk management pool, or self-insured employer may audit the Diagnostic Related Group assignment of the hospital.

(8) The chief executive officer of each hospital shall sign and file with the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, a sworn statement disclosing the Current Medicare Factor of the hospital in effect on October 1 of such year and each item and amount making up such factor.

(9) Each hospital, workers' compensation insurer, risk management pool, and self-insured employer shall report to the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, the total number of claims submitted for each Diagnostic Relat-

ed Group and the number of times billed charges exceeded the Stop-Loss Threshold amount for each Diagnostic Related Group.

(10) The compensation court may add or subtract Diagnostic Related Groups in striving to achieve the goal of including those Diagnostic Related Groups that encompass at least ninety percent of the inpatient hospital workers' compensation claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. The administrator of the compensation court shall annually make necessary adjustments to comply with the Current Medicare Weights and shall annually adjust the Current Medicare Factor for each hospital based on the annual statement submitted pursuant to subsection (8) of this section.

Source: Laws 2007, LB588, § 2; Laws 2009, LB630, § 2; Laws 2010, LB872, § 1.
Effective date July 15, 2010.

48-121 Compensation; schedule; total, partial, and temporary disability; injury to specific parts of the body; amounts and duration of payments.

The following schedule of compensation is hereby established for injuries resulting in disability:

(1) For total disability, the compensation during such disability shall be sixty-six and two-thirds percent of the wages received at the time of injury, but such compensation shall not be more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation. Nothing in this subdivision shall require payment of compensation after disability shall cease;

(2) For disability partial in character, except the particular cases mentioned in subdivision (3) of this section, the compensation shall be sixty-six and two-thirds percent of the difference between the wages received at the time of the injury and the earning power of the employee thereafter, but such compensation shall not be more than the maximum weekly income benefit specified in section 48-121.01. This compensation shall be paid during the period of such partial disability but not beyond three hundred weeks. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability;

(3) For disability resulting from permanent injury of the classes listed in this subdivision, the compensation shall be in addition to the amount paid for temporary disability, except that the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable. For disability resulting from permanent injury of the following classes, compensation shall be: For the loss of a thumb, sixty-six and two-thirds percent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds percent of daily wages during twenty weeks. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of daily wages during fifteen weeks. The loss of the first phalange of the thumb or

of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be for one-half of the periods of time above specified, and the compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb, except that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand. For the loss of a great toe, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds percent of daily wages during ten weeks. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of such toe, and compensation shall be for one-half of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire toe. For the loss of a hand, sixty-six and two-thirds percent of daily wages during one hundred seventy-five weeks. For the loss of an arm, sixty-six and two-thirds percent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds percent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds percent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds percent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds percent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds percent of daily wages during fifty weeks. For the loss of the nose, sixty-six and two-thirds percent of daily wages during fifty weeks.

In any case in which there is a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, compensation benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of benefits to run consecutively. The total loss or permanent total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or hearing in both ears, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to subdivision (1) of this section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the compensation shall bear such relation to the amounts named in such subdivision as the disabilities bear to those produced by the injuries named therein.

If, in the compensation court's discretion, compensation benefits payable for a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, resulting from the same accident or illness, do not adequately compensate the employee for such loss or loss of use and such loss or loss of use results in at least a thirty percent loss of earning

capacity, the compensation court shall, upon request of the employee, determine the employee's loss of earning capacity consistent with the process for such determination under subdivision (1) or (2) of this section, and in such a case the employee shall not be entitled to compensation under this subdivision.

If the employer and the employee are unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to sections 48-173 to 48-185. Compensation under this subdivision shall not be more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of the injury the employee received wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation;

(4) For disability resulting from permanent disability, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee; and

(5) The employee shall be entitled to compensation from his or her employer for temporary disability while undergoing physical or medical rehabilitation and while undergoing vocational rehabilitation whether such vocational rehabilitation is voluntarily offered by the employer and accepted by the employee or is ordered by the Nebraska Workers' Compensation Court or any judge of the compensation court.

Source: Laws 1913, c. 198, § 21, p. 586; R.S.1913, § 3662; Laws 1917, c. 85, § 7, p. 202; Laws 1919, c. 91, § 2, p. 228; Laws 1921, c. 122, § 1, p. 521; C.S.1922, § 3044; C.S.1929, § 48-121; Laws 1935, c. 57, § 41, p. 210; C.S.Supp.,1941, § 48-121; R.S.1943, § 48-121; Laws 1945, c. 112, § 1, p. 357; Laws 1949, c. 160, § 1, p. 403; Laws 1951, c. 152, § 1, p. 617; Laws 1953, c. 162, § 1, p. 506; Laws 1955, c. 186, § 1, p. 527; Laws 1957, c. 203, § 1, p. 710; Laws 1957, c. 204, § 1, p. 716; Laws 1959, c. 223, § 1, p. 784; Laws 1963, c. 284, § 1, p. 847; Laws 1963, c. 285, § 1, p. 854; Laws 1965, c. 279, § 1, p. 800; Laws 1967, c. 288, § 1, p. 783; Laws 1969, c. 388, § 3, p. 1360; Laws 1969, c. 393, § 1, p. 1378; Laws 1971, LB 320, § 1; Laws 1973, LB 193, § 1; Laws 1974, LB 807, § 1; Laws 1974, LB 808, § 1; Laws 1974, LB 710, § 1; Laws 1975, LB 198, § 1; Laws 1977, LB 275, § 1; Laws 1978, LB 446, § 1; Laws 1979, LB 114, § 1; Laws 1979, LB 358, § 1; Laws 1983, LB 158, § 1; Laws 1985, LB 608, § 1; Laws 1993, LB 757, § 4; Laws 1999, LB 216, § 5; Laws 2007, LB588, § 4.

48-121.02 State average weekly wage; how determined.

For purposes of section 48-121.01, the state average weekly wage shall be determined by the administrator of the Nebraska Workers' Compensation Court as follows: On or before October 1 of each year, the total insured wages reported to the Department of Labor for the preceding calendar year, excluding

federal employees, shall be divided by the average monthly number of employees insured under the Employment Security Law. Such average monthly number of employees shall be determined by dividing the total number of employees insured under the Employment Security Law reported for such calendar year by twelve. The state average annual wage thus obtained shall be divided by fifty-two, and the state average weekly wage thus determined shall be rounded to the nearest whole cent. The state average weekly wage as so determined shall be applicable for the calendar year commencing January 1 following the October 1 determination.

Source: Laws 1993, LB 757, § 6; Laws 2005, LB 13, § 4.

Cross References

Employment Security Law, see section 48-601.

48-125 Compensation; method of payment; delay; review of award; attorney's fees; interest.

(1)(a) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.

(b) Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the compensation court, except that for any award or judgment against the state in excess of one hundred thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars.

(2) Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the Nebraska Workers' Compensation Court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers. If the employer files an application for review before the compensation court from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the compensation court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such review, and the Court of Appeals or Supreme Court shall in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. If the employee files an application for a review before the compensation court from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an application for a review before the compensation court from an award of a judge of the compensation court when the amount of

compensation due is disputed and obtains an increase in the amount of such award, the compensation court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such review, and the Court of Appeals or Supreme Court may in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. A reasonable attorney's fee allowed pursuant to this section shall not affect or diminish the amount of the award.

(3) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, until the date payment is made by the employer, at a rate equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Interest shall apply only to those weekly compensation benefits awarded which have accrued as of the date payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

Source: Laws 1913, c. 198, § 25, p. 591; R.S.1913, § 3666; Laws 1917, c. 85, § 9 1/2, p. 208; Laws 1919, c. 91, § 4, p. 234; C.S.1922, § 3048; C.S.1929, § 48-125; Laws 1935, c. 57, § 20, p. 197; C.S.Supp.,1941, § 48-125; R.S.1943, § 48-125; Laws 1973, LB 169, § 1; Laws 1975, LB 187, § 2; Laws 1983, LB 18, § 1; Laws 1986, LB 811, § 43; Laws 1991, LB 732, § 110; Laws 1992, LB 360, § 14; Laws 1999, LB 216, § 6; Laws 2005, LB 13, § 5; Laws 2005, LB 238, § 4; Laws 2009, LB630, § 3.

48-125.02 State employee claim; Prompt Payment Act applicable; other claims; processing of claim; requirements; failure to pay; effect; presumption of payment.

(1) Regarding payment of a claim for medical, surgical, or hospital services for a state employee under the Nebraska Workers' Compensation Act, the Prompt Payment Act applies.

(2) For claims other than claims under subsection (1) of this section regarding payment of a claim for medical, surgical, or hospital services for an employee under the Nebraska Workers' Compensation Act:

(a) The workers' compensation insurer, risk management pool, or self-insured employer shall notify the provider within fifteen business days after receiving a claim as to what information is necessary to process the claim. Failure to notify the provider assumes the workers' compensation insurer, risk management pool, or self-insured employer has all information necessary to pay the claim. The workers' compensation insurer, risk management pool, or self-insured employer shall pay providers in accordance with sections 48-120 and 48-120.04 within thirty business days after receipt of all information necessary to process the claim. Failure to pay the provider within the thirty days will cause the workers' compensation insurer, risk management pool, or self-insured employer to reimburse the provider's billed charges instead of the scheduled or contracted fees;

(b) If a claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the workers' compensation insurer, risk management pool, or self-insured employer or its clearinghouse. If a claim is submitted by mail, the claim is presumed to have been received five business days after the claim has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all; and

(c) Payment of a claim by the workers' compensation insurer, risk management pool, or self-insured employer means the receipt of funds by the provider. If payment is submitted electronically, the payment is presumed to have been received on the date of the electronic verification of receipt by the provider or the provider's clearinghouse. If payment is submitted by mail, the payment is presumed to have been received five business days after the payment has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the payment was received on another day or not received at all.

Source: Laws 2007, LB588, § 3.

Cross References

Prompt Payment Act, see section 81-2401.

48-126 Wages, defined; calculation.

Wherever in the Nebraska Workers' Compensation Act the term wages is used, it shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident. It shall not include gratuities received from the employer or others, nor shall it include board, lodging, or similar advantages received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring, except that if the workers' compensation insurer shall have collected a premium based upon the value of such board, lodging, and similar advantages, then the value thereof shall become a part of the basis of determining compensation benefits. In occupations involving seasonal employment or employment dependent upon the weather, the employee's weekly wages shall be taken to be one-fiftieth of the total wages which he or she has earned from all occupations during the year immediately preceding the accident, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not fairly represent the earnings of the employee. In such a case, the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his or her average weekly earnings. In continuous employments, if immediately prior to the accident the rate of wages was fixed by the day or hour or by the output of the employee, his or her weekly wages shall be taken to be his or her average weekly income for the period of time ordinarily constituting his or her week's work, and using as the basis of calculation his or her earnings during as much of the preceding six months as he or she worked for the same employer, except as provided in sections 48-121 and 48-122. The calculation shall also be made with reference to the average earnings for a working day of ordinary length and exclusive of earnings from overtime, except that if the insurance company's policy of insurance provides for the collection of a premium based upon such overtime,

then such overtime shall become a part of the basis of determining compensation benefits.

Source: Laws 1913, c. 198, § 26, p. 592; R.S.1913, § 3667; Laws 1917, c. 85, § 10, p. 208; C.S.1922, § 3049; Laws 1927, c. 39, § 2, p. 17; C.S.1929, § 48-126; Laws 1935, c. 57, § 39, p. 208; C.S.Supp.,1941, § 48-126; R.S.1943, § 48-126; Laws 1953, c. 163, § 1(1), p. 512; Laws 1957, c. 204, § 3, p. 721; Laws 1986, LB 811, § 45; Laws 2005, LB 238, § 5.

(e) SETTLEMENT AND PAYMENT OF COMPENSATION

48-136 Compensation; voluntary settlements.

The interested parties shall have the right to settle all matters of compensation between themselves with the consent of the workers' compensation insurer, if any, and in accordance with the Nebraska Workers' Compensation Act. No such settlement shall be binding unless the settlement is in accordance with such act.

Source: Laws 1913, c. 198, § 36, p. 595; R.S.1913, § 3677; Laws 1917, c. 85, § 12, p. 209; C.S.1922, § 3059; C.S.1929, § 48-136; Laws 1935, c. 57, § 22, p. 199; C.S.Supp.,1941, § 48-136; R.S.1943, § 48-136; Laws 1978, LB 649, § 2; Laws 1986, LB 811, § 54; Laws 2005, LB 238, § 6; Laws 2009, LB630, § 4.

48-138 Compensation; lump-sum settlement; computation; fee.

The amounts of compensation payable periodically under the law by agreement of the parties with the approval of the Nebraska Workers' Compensation Court may be commuted to one or more lump-sum payments, except compensation due for death, permanent disability, or claimed permanent disability which may be commuted only as provided in section 48-139. If commutation is agreed upon pursuant to this section or section 48-139, the lump sum to be paid shall be fixed at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five percent per annum with annual rests.

The fee of the clerk of the compensation court for filing, docketing, and indexing an agreement submitted for approval as provided in this section shall be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

Source: Laws 1913, c. 198, § 40, p. 596; R.S.1913, § 3681; Laws 1917, c. 85, § 16, p. 212; Laws 1921, c. 122, § 1, p. 526; C.S.1922, § 3063; C.S.1929, § 48-140; Laws 1935, c. 57, § 25, p. 199; C.S.Supp.,1941, § 48-140; R.S.1943, § 48-138; Laws 1975, LB 187, § 3; Laws 1986, LB 811, § 56; Laws 1993, LB 757, § 9; Laws 2009, LB630, § 5.

48-139 Compensation; lump-sum settlement; submitted to Nebraska Workers' Compensation Court; procedure; discharge of employer liability; filing of release; form; contents; fees.

(1)(a) Whenever an injured employee or his or her dependents and the employer agree that the amounts of compensation due as periodic payments for death, permanent disability, or claimed permanent disability under the Nebras-

ka Workers' Compensation Act shall be commuted to one or more lump-sum payments, such settlement shall be submitted to the Nebraska Workers' Compensation Court for approval as provided in subsection (2) of this section if:

(i) The employee is not represented by counsel;

(ii) The employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(iii) Medical, surgical, or hospital expenses incurred for treatment of the injury have been paid by medicaid and medicaid will not be reimbursed as part of the settlement;

(iv) Medical, surgical, or hospital expenses incurred for treatment of the injury will not be fully paid as part of the settlement; or

(v) The settlement seeks to commute amounts of compensation due to dependents of the employee.

(b) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court as provided in subsection (3) of this section. Nothing in this section shall be construed to increase the compensation court's duties or authority with respect to the approval of lump-sum settlements under the act.

(2)(a) An application for an order approving a lump-sum settlement, signed and verified by both parties, shall be filed with the clerk of the compensation court and shall be entitled the same as an action by such employee or dependents against such employer. The application shall contain a concise statement of the terms of the settlement or agreement sought to be approved with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, the nature of the employment, and such other matters as may be required by the compensation court. The application may provide for payment of future medical, surgical, or hospital expenses incurred by the employee. The compensation court may hold a hearing on the application at a time and place selected by the compensation court, and proof may be adduced and witnesses subpoenaed and examined the same as in an action in equity.

(b) If the compensation court finds such lump-sum settlement is made in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, the compensation court shall make an order approving the same. If such settlement is not approved, the compensation court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the compensation court.

(c) Every such lump-sum settlement approved by order of the compensation court shall be final and conclusive unless procured by fraud. Upon paying the amount approved by the compensation court, the employer (i) shall be discharged from further liability on account of the injury or death, other than liability for the payment of future medical, surgical, or hospital expenses if such liability is approved by the compensation court on the application of the parties, and (ii) shall be entitled to a duly executed release. Upon filing the release, the liability of the employer under any agreement, award, finding, or decree shall be discharged of record.

(3) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court in accordance with this subsection that is signed and verified by the employee and the employee's attorney. Such release shall be a full and complete discharge from further liability for the employer on account of the injury, including future medical, surgical, or hospital expenses, unless such expenses are specifically excluded from the release. The release shall be made on a form approved by the compensation court and shall contain a statement signed and verified by the employee that:

(a) The employee understands and waives all rights under the Nebraska Workers' Compensation Act, including, but not limited to:

(i) The right to receive weekly disability benefits, both temporary and permanent;

(ii) The right to receive vocational rehabilitation services;

(iii) The right to receive future medical, surgical, and hospital services as provided in section 48-120, unless such services are specifically excluded from the release; and

(iv) The right to ask a judge of the compensation court to decide the parties' rights and obligations;

(b) The employee is not eligible for medicare, is not a current medicare beneficiary, and does not have a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(c) There are no medical, surgical, or hospital expenses incurred for treatment of the injury which have been paid by medicaid and not reimbursed to medicaid by the employer as part of the settlement; and

(d) There are no medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid after the settlement.

(4) The fees of the clerk of the compensation court for filing, docketing, and indexing an application for an order approving a lump-sum settlement or filing a release as provided in this section shall be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

Source: Laws 1917, c. 85, § 16, p. 212; Laws 1921, c. 122, § 1, p. 526; C.S.1922, § 3063; C.S.1929, § 48-140; Laws 1935, c. 57, § 25, p. 199; C.S.Supp.,1941, § 48-140; R.S.1943, § 48-139; Laws 1951, c. 153, § 1, p. 623; Laws 1975, LB 187, § 4; Laws 1977, LB 126, § 3; Laws 1978, LB 649, § 3; Laws 1986, LB 811, § 57; Laws 1993, LB 757, § 10; Laws 2002, LB 417, § 3; Laws 2009, LB630, § 6.

48-140 Compensation; lump-sum settlements; conclusiveness; exception.

Any lump-sum settlement by agreement of the parties pursuant to section 48-139 shall be final and not subject to readjustment if the settlement is in conformity with the Nebraska Workers' Compensation Act, unless the settlement is procured by fraud. All awards of compensation made by the compensa-

tion court, except those amounts payable periodically, shall be final and not subject to readjustment.

Source: Laws 1913, c. 198, § 41, p. 597; R.S.1913, § 3682; Laws 1917, c. 85, § 17, p. 213; Laws 1921, c. 122, § 1, p. 527; C.S.1922, § 3064; C.S.1929, § 48-141; Laws 1935, c. 57, § 26, p. 200; C.S.Supp.,1941, § 48-141; R.S.1943, § 48-140; Laws 1975, LB 187, § 5; Laws 1986, LB 811, § 58; Laws 1989, LB 410, § 1; Laws 1993, LB 757, § 11; Laws 2009, LB630, § 7.

48-141 Lump-sum settlement; finality; periodic payment; modification.

All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employee or his or her dependents by lump-sum payments pursuant to section 48-139 shall be final and not subject to readjustment if the lump-sum settlement is in conformity with the Nebraska Workers' Compensation Act, unless the settlement is procured by fraud, but the amount of any agreement or award payable periodically may be modified as follows: (1) At any time by agreement of the parties with the approval of the Nebraska Workers' Compensation Court; or (2) if the parties cannot agree, then at any time after six months from the date of the agreement or award, an application may be made by either party on the ground of increase or decrease of incapacity due solely to the injury or that the condition of a dependent has changed as to age or marriage or by reason of the death of the dependent. In such case, the same procedure shall be followed as in sections 48-173 to 48-185 in case of disputed claim for compensation.

Source: Laws 1913, c. 198, § 42, p. 597; R.S.1913, § 3683; Laws 1917, c. 85, § 18, p. 213; Laws 1921, c. 122, § 1, p. 527; C.S.1922, § 3065; Laws 1929, c. 81, § 2, p. 274; C.S.1929, § 48-142; Laws 1935, c. 57, § 27, p. 201; C.S.Supp.,1941, § 48-142; R.S.1943, § 48-141; Laws 1975, LB 187, § 6; Laws 1986, LB 811, § 59; Laws 1989, LB 410, § 2; Laws 1993, LB 757, § 12; Laws 2009, LB630, § 8.

48-144 Accidents and settlements; reports; death of alien employee; notice to consul.

(1) Reports of accidents and settlements shall be made in a form and manner prescribed by the administrator of the Nebraska Workers' Compensation Court. Such reports, if filed by a workers' compensation insurer on behalf of an employer, shall be deemed to have been filed by the employer.

(2) When an injury results in the death of an employee who is a citizen or subject of a foreign country, the administrator of the compensation court shall, after the death has been reported to the compensation court, at once notify the superior consular officer of the country of which the employee at the time of his or her death was a citizen or subject, and whose consular district embraces the State of Nebraska, or the representative, residing in the State of Nebraska, of such consular officer, whom he or she shall have formally designated as his or her representative by a communication in writing to the compensation court. Such notification shall contain in addition to the name of the employee such further information as the compensation court may possess respecting the place

of birth, parentage, and names and addresses of the dependents of the employee.

Source: Laws 1913, c. 198, § 45, p. 598; R.S.1913, § 3686; Laws 1917, c. 85, § 20, p. 214; C.S.1922, § 3068; C.S.1929, § 48-145; Laws 1935, c. 57, § 30, p. 202; C.S.Supp.,1941, § 48-145; R.S.1943, § 48-144; Laws 1986, LB 811, § 62; Laws 2005, LB 13, § 6.

48-144.01 Injuries; reports; time within which to file; terms, defined.

(1) In every case of reportable injury arising out of and in the course of employment, the employer or workers' compensation insurer shall file a report thereof with the Nebraska Workers' Compensation Court. Such report shall be filed within ten days after the employer or insurer has been given notice of or has knowledge of the injury.

(2) For purposes of this section:

(a) Reportable injury means an injury or diagnosed occupational disease which results in: (i) Death, regardless of the time between the death and the injury or onset of disease; (ii) time away from work; (iii) restricted work or termination of employment; (iv) loss of consciousness; or (v) medical treatment other than first aid;

(b) Restricted work means the inability of the employee to perform one or more of the duties of his or her normal job assignment. Restricted work does not occur if the employee is able to perform all of the duties of his or her normal job assignment, but a work restriction is assigned because the employee is experiencing minor musculoskeletal discomfort and for the purpose of preventing a more serious condition from developing;

(c) Medical treatment means treatment administered by a physician or other licensed health care professional; and

(d) First aid means:

(i) Using a nonprescription medication at nonprescription strength. For medications available in both prescription and nonprescription form, a recommendation by a physician or other licensed health care professional to use a nonprescription medication at prescription strength is not first aid;

(ii) Administering tetanus immunizations. Administering other immunizations, such as hepatitis B vaccine and rabies vaccine, is not first aid;

(iii) Cleaning, flushing, or soaking wounds on the surface of the skin;

(iv) Using wound coverings, such as bandages and gauze pads, and superficial wound closing devices, such as butterfly bandages and steri-strips. Using other wound closing devices, such as sutures and staples, is not first aid;

(v) Using hot or cold therapy;

(vi) Using any nonrigid means of support, such as elastic bandages, wraps, and nonrigid back belts. Using devices with rigid stays or other systems designed to immobilize parts of the body is not first aid;

(vii) Using temporary immobilization devices, such as splints, slings, neck collars, and back boards, while transporting accident victims;

(viii) Drilling of a fingernail or toenail to relieve pressure or draining fluid from a blister;

(ix) Using eye patches;

(x) Removing foreign bodies from the eye using only irrigation or a cotton swab;

(xi) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means;

(xii) Using finger guards;

(xiii) Using massages. Using physical therapy or chiropractic treatment is not first aid; and

(xiv) Drinking fluids for relief of heat stress.

Source: Laws 1971, LB 572, § 11; Laws 1972, LB 1221, § 1; Laws 1986, LB 811, § 63; Laws 2005, LB 238, § 7.

48-144.03 Workers' compensation insurance policy; master policy obtained by professional employer organization; notice of cancellation or nonrenewal; effective date.

(1) Notwithstanding policy provisions that stipulate a workers' compensation insurance policy to be a contract with a fixed term of coverage that expires at the end of the term, coverage under a workers' compensation insurance policy shall continue in full force and effect until notice is given in accordance with this section.

(2) No cancellation of a workers' compensation insurance policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the Nebraska Workers' Compensation Court and to the employer. No such cancellation shall be effective until thirty days after the giving of such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (a) notice from the employer to the insurer to cancel the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(3) No workers' compensation insurance policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No workers' compensation insurance policy shall expire or lapse until thirty days after the giving of such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (a) notice from the employer to the insurer to not renew the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(4) Subsections (2) and (3) of this section terminate on January 1, 2012. Subsections (5), (6), and (7) of this section apply beginning on January 1, 2012.

(5)(a) This subsection applies to workers' compensation policies other than master policies or multiple coordinated policies obtained by a professional employer organization.

(b) No cancellation of a policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court and to the employer. No such cancellation shall be effective until thirty days after giving such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (i) notice from the employer to the insurer to cancel the policy, (ii) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (iii) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (iv) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(c) No policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No policy shall expire or lapse until thirty days after giving such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (i) notice from the employer to the insurer to not renew the policy, (ii) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (iii) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (iv) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(6)(a) This subsection applies to workers' compensation master policies obtained by a professional employer organization.

(b) No cancellation of a master policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No such cancellation shall be effective until thirty days after giving such notices.

(c) No termination of coverage for a client or any employees of a client under a master policy within the policy period shall be effective unless notice is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No such termination of coverage shall be effective until thirty days after giving such notices, except that the termination of coverage may be effective ten days after the giving of such notices if such termination is based on (i) notice from the client to the professional employer organization or the insurer to terminate the coverage or (ii) notice from the professional employer organization of the client's nonpayment of premium.

(d) No master policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No master policy shall expire or lapse until thirty days after giving such notices.

(e) Notice of the cancellation or nonrenewal of a master policy or the termination of coverage for a client or the employees of a client under such a policy shall be given by the professional employer organization to the client within fifteen days after the cancellation, nonrenewal, or termination unless replacement coverage has been obtained.

(7)(a) This subsection applies to workers' compensation multiple coordinated policies obtained by a professional employer organization.

(b) No cancellation of a policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer

to the compensation court, to the professional employer organization, and to the client employer. No such cancellation shall be effective until thirty days after giving such notices, except that the cancellation may be effective ten days after giving such notices if such cancellation is based on (i) notice from the client to the professional employer organization or the insurer to cancel the policy, (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03, (iii) failure of the client, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445, or (iv) for policies issued pursuant to section 44-3,158, nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(c) No termination of coverage for any employees of the client during the policy period shall be effective unless notice is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client. No such termination of coverage shall be effective until thirty days after giving such notices, except that the termination of coverage may be effective ten days after the giving of such notices if such termination is based on (i) notice from the client to the professional employer organization or the insurer to terminate the coverage or (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(d) No policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client. No policy shall expire or lapse until thirty days after giving such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (i) notice from the client to the professional employer organization or the insurer to not renew the policy, (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03, (iii) failure of the client, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445, or (iv) for policies issued pursuant to section 44-3,158, nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(e) An insurer may refrain from sending notices required by this subsection to a professional employer organization's client based upon the professional employer organization's representation that coverage has been or will be replaced. Such representation shall not absolve the insurer of its responsibility to continue coverage if such representation proves inaccurate.

(8) Notwithstanding other provisions of this section, if replacement workers' compensation insurance coverage has been secured with another workers' compensation insurer, then the cancellation or nonrenewal of the policy or the termination of coverage for a client or employees of a client under the policy shall be effective as of the effective date of such other insurance coverage.

(9) The notices required by this section shall state the reason for the cancellation or nonrenewal of the policy or termination of coverage for a client or employees of a client under a policy.

(10) The notices required by this section shall be provided in writing and shall be deemed given upon the mailing of such notices by certified mail, except that notices from insurers to the compensation court may be provided by

electronic means if such electronic means is approved by the administrator of the compensation court. If notice is provided by electronic means pursuant to such an approval, it shall be deemed given upon receipt and acceptance by the compensation court.

Source: Laws 1971, LB 572, § 13; Laws 1972, LB 1269, § 1; Laws 1986, LB 811, § 65; Laws 1994, LB 978, § 49; Laws 1994, LB 1222, § 61; Laws 1996, LB 1230, § 1; Laws 2005, LB 13, § 7; Laws 2005, LB 238, § 8; Laws 2007, LB117, § 33; Laws 2009, LB630, § 9; Laws 2010, LB579, § 15.
Operative date July 15, 2010.

48-144.04 Reports; penalties for not filing; statutes of limitations not to run until report furnished.

Any employer, workers' compensation insurer, or risk management pool who fails, neglects, or refuses to file any report required of him or her by the Nebraska Workers' Compensation Court shall be guilty of a Class II misdemeanor for each such failure, neglect, or refusal. It shall be the duty of the Attorney General to act as attorney for the state. In addition to the penalty, where an employer, workers' compensation insurer, or risk management pool has been given notice, or the employer, workers' compensation insurer, or risk management pool has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file a report thereof, the limitations in section 48-137 and for injuries occurring before December 1, 1997, the limitations in section 48-128 shall not begin to run against the claim of the injured employee or his or her dependents entitled to compensation or against the State of Nebraska on behalf of the Workers' Compensation Trust Fund, or in favor of either the employer, workers' compensation insurer, or risk management pool until such report shall have been furnished as required by the compensation court.

Source: Laws 1971, LB 572, § 14; Laws 1977, LB 40, § 271; Laws 1986, LB 811, § 66; Laws 1987, LB 398, § 43; Laws 1997, LB 854, § 3; Laws 2000, LB 1221, § 7; Laws 2005, LB 238, § 9.

Cross References

Risk management pool, defined, see section 44-4303.

48-145 Employers; compensation insurance required; exceptions; effect of failure to comply; self-insurer; payments required; deposit with State Treasurer; credited to General Fund.

To secure the payment of compensation under the Nebraska Workers' Compensation Act:

(1) Every employer in the occupations described in section 48-106, except the State of Nebraska and any governmental agency created by the state, shall either (a) insure and keep insured its liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state, (b) in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, be a party to an effective agreement with the self-insured motor carrier under section 48-115.02, (c) be a member of a risk management pool authorized and providing group self-insurance of workers' compensation liability pursuant to the Intergovernmental Risk Management Act, or (d) with

approval of the Nebraska Workers' Compensation Court, self-insure its workers' compensation liability.

An employer seeking approval to self-insure shall make application to the compensation court in the form and manner as the compensation court may prescribe, meet such minimum standards as the compensation court shall adopt and promulgate by rule and regulation, and furnish to the compensation court satisfactory proof of financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. Approval is valid for the period prescribed by the compensation court unless earlier revoked pursuant to this subdivision or subsection (1) of section 48-146.02. Notwithstanding subdivision (1)(d) of this section, a professional employer organization shall not be eligible to self-insure its workers' compensation liability. The compensation court may by rule and regulation require the deposit of an acceptable security, indemnity, trust, or bond to secure the payment of compensation liabilities as they are incurred. The agreement or document creating a trust for use under this section shall contain a provision that the trust may only be terminated upon the consent and approval of the compensation court. Any beneficial interest in the trust principal shall be only for the benefit of the past or present employees of the self-insurer and any persons to whom the self-insurer has agreed to pay benefits under subdivision (11) of section 48-115 and section 48-115.02. Any limitation on the termination of a trust and all other restrictions on the ownership or transfer of beneficial interest in the trust assets contained in such agreement or document creating the trust shall be enforceable, except that any limitation or restriction shall be enforceable only if authorized and approved by the compensation court and specifically delineated in the agreement or document.

Notwithstanding any other provision of the Nebraska Workers' Compensation Act, a three-judge panel of the compensation court may, after notice and hearing, revoke approval as a self-insurer if it finds that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke approval as a self-insurer pursuant to this subdivision. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from a revocation pursuant to this subdivision shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas unless the self-insurer executes to the compensation court a bond with one or more sureties authorized to do business within the State of Nebraska in an amount determined by the three-judge panel to be sufficient to satisfy the obligations of the self-insurer under the act;

(2) An approved self-insurer shall furnish to the State Treasurer an annual amount equal to two and one-half percent of the prospective loss costs for like

employment but in no event less than twenty-five dollars. Prospective loss costs is defined in section 48-151. The compensation court is the sole judge as to the prospective loss costs that shall be used. All money which a self-insurer is required to pay to the State Treasurer, under this subdivision, shall be computed and tabulated under oath as of January 1 and paid to the State Treasurer immediately thereafter. The compensation court or designee of the compensation court may audit the payroll of a self-insurer at the compensation court's discretion. All money paid by a self-insurer under this subdivision shall be credited to the General Fund;

(3) Every employer who fails, neglects, or refuses to comply with the conditions set forth in subdivision (1) or (2) of this section shall be required to respond in damages to an employee for personal injuries, or when personal injuries result in the death of an employee, then to his or her dependents; and

(4) Any security, indemnity, trust, or bond provided by a self-insurer pursuant to subdivision (1) of this section shall be deemed a surety for the purposes of the payment of valid claims of the self-insurer's employees and the persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers' Compensation Act pursuant to subdivision (11) of section 48-115 and section 48-115.02 as generally provided in the act.

Source: Laws 1913, c. 198, § 46, p. 599; R.S.1913, § 3687; Laws 1917, c. 85, § 21, p. 215; Laws 1921, c. 122, § 1, p. 528; C.S.1922, § 3069; C.S.1929, § 48-146; Laws 1935, c. 57, § 31, p. 202; C.S.Supp.,1941, § 48-146; R.S.1943, § 48-145; Laws 1957, c. 205, § 1, p. 723; Laws 1963, c. 286, § 1, p. 860; Laws 1971, LB 572, § 8; Laws 1986, LB 811, § 67; Laws 1988, LB 1146, § 1; Laws 1997, LB 474, § 4; Laws 1999, LB 216, § 9; Laws 2000, LB 1221, § 8; Laws 2005, LB 13, § 8; Laws 2005, LB 238, § 10; Laws 2010, LB579, § 16.
Operative date July 15, 2010.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.

48-145.01 Employers; compensation required; penalty for failure to comply; injunction; Attorney General; duties.

(1) Any employer required to secure the payment of compensation under the Nebraska Workers' Compensation Act who willfully fails to secure the payment of such compensation shall be guilty of a Class I misdemeanor. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be individually guilty of a Class I misdemeanor and shall be personally liable jointly and severally with such employer for any compensation which may accrue under the act in respect to any injury which may occur to any employee of such employer while it so fails to secure the payment of compensation as required by section 48-145.

(2) If an employer subject to the Nebraska Workers' Compensation Act fails to secure the payment of compensation as required by section 48-145, the employer may be enjoined from doing business in this state until the employer complies with subdivision (1) of section 48-145. If a temporary injunction is granted at the request of the State of Nebraska, no bond shall be required to

make the injunction effective. The Nebraska Workers' Compensation Court or the district court may order an employer who willfully fails to secure the payment of compensation to pay a monetary penalty of not more than one thousand dollars for each violation. For purposes of this subsection, each day of continued failure to secure the payment of compensation as required by section 48-145 constitutes a separate violation. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be personally liable jointly and severally with the employer for such monetary penalty. All penalties collected pursuant to this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) It shall be the duty of the Attorney General to act as attorney for the State of Nebraska for purposes of this section. The Attorney General may file a motion pursuant to section 48-162.03 for an order directing an employer to appear before a judge of the compensation court and show cause as to why a monetary penalty should not be assessed against the employer pursuant to subsection (2) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the compensation court and present evidence of a violation or violations pursuant to subsection (2) of this section and the identity of the person who had authority to secure the payment of compensation. Appeal from an order of a judge of the compensation court pursuant to subsection (2) of this section shall be in accordance with section 48-179.

Source: Laws 1971, LB 572, § 18; Laws 1977, LB 40, § 272; Laws 1986, LB 811, § 68; Laws 1993, LB 121, § 283; Laws 1999, LB 331, § 1; Laws 2005, LB 13, § 9.

48-145.02 Employers; reports required.

Every employer shall upon request of the administrator of the Nebraska Workers' Compensation Court report to the administrator (1) the number of its employees and the nature and location of their work, (2) the name of the workers' compensation insurer with whom the employer has insured its liability under the Nebraska Workers' Compensation Act and the number and date of expiration of such policy, and (3) the employer's federal employer identification number or numbers. Failure to furnish such report within ten days from the making of a request by certified or registered mail shall constitute presumptive evidence that the delinquent employer is violating section 48-145.01.

Source: Laws 1971, LB 572, § 19; Laws 1972, LB 1061, § 1; Laws 1986, LB 811, § 69; Laws 2005, LB 13, § 10.

48-145.04 Self-insurance; assessment; payments.

(1) The administrator of the Nebraska Workers' Compensation Court shall, prior to January 1 of each year, estimate as closely as possible the actual cost to the court of evaluating an application for self-insurance and supervising and administering the self-insurance program for the ensuing year and assess the amount thereof, but not to exceed two thousand dollars, against each applicant for self-insurance in this state. Such assessment shall be in addition to the payments required by subdivision (2) of section 48-145 and section 48-1,114.

The administrator shall notify each applicant of the amount of the individual assessment. Such assessment shall be due and payable with the application for self-insurance. If any assessment is not paid, the application shall not be considered.

(2) All payments received under subsection (1) of this section shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund. Such payments shall be expended solely for evaluating applications for self-insurance and to aid in supervising and administering the self-insurance program. After the first year, the balance remaining of such payments at the time each annual assessment is made shall be taken into account when the total assessment for the ensuing year is made.

Source: Laws 1986, LB 1036, § 1; Laws 1992, LB 1006, § 93; Laws 1993, LB 757, § 13; Laws 1999, LB 2, § 1; Laws 2000, LB 1221, § 9; Laws 2005, LB 13, § 11.

48-146 Compensation insurance; provisions required; approval by Department of Insurance; effect of bankruptcy.

No policy of insurance against liability arising under the Nebraska Workers' Compensation Act shall be issued and no agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall have any force or effect unless it contains the agreement of the workers' compensation insurer or risk management pool that it will promptly pay to the person entitled to the same all benefits conferred by such act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by the insolvency or bankruptcy of the employer or his or her estate or discharge therein or by any default of the employer after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the workers' compensation insurer or risk management pool to the person entitled to compensation enforceable in his or her name. Each workers' compensation insurance policy and each agreement forming a risk management pool shall be deemed to be made subject to the Nebraska Workers' Compensation Act. No corporation, association, or organization shall enter into a workers' compensation insurance policy unless copies of such forms have been filed with and approved by the Department of Insurance. Each workers' compensation insurance policy and each agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall contain a clause to the effect (1) that as between the employer and the workers' compensation insurer or risk management pool the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer or risk management pool, (2) that jurisdiction of the employer for the purpose of such act shall be jurisdiction of the insurer or risk management pool, and (3) that the insurer or risk management pool shall in all things be bound by the awards, judgments, or decrees rendered against such employer. Except when the Professional Employer Organization Registration Act allows coverage to be limited to co-employees as specified in a professional employer agreement, each workers' compensation insurance policy and each agreement providing such group self-insurance coverage shall include within its terms the payment of compensation to all

employees who are within the scope and purview of the Nebraska Workers' Compensation Act, including potential new or unknown employees.

Source: Laws 1913, c. 198, § 47, p. 599; R.S.1913, § 3688; Laws 1917, c. 85, § 22, p. 215; C.S.1922, § 3070; C.S.1929, § 48-147; Laws 1933, c. 91, § 1, p. 364; Laws 1935, c. 57, § 32, p. 203; C.S.Supp.,1941, § 48-147; R.S.1943, § 48-146; Laws 1949, c. 162, § 1, p. 415; Laws 1967, c. 291, § 2, p. 795; Laws 1971, LB 572, § 9; Laws 1986, LB 811, § 71; Laws 1987, LB 398, § 44; Laws 1988, LB 1146, § 2; Laws 1997, LB 474, § 5; Laws 1999, LB 216, § 10; Laws 2005, LB 238, § 11; Laws 2010, LB579, § 17. Operative date July 15, 2010.

Cross References

Construction of section, see section 48-115.01.
Professional Employer Organization Registration Act, see section 48-2701.
Risk management pool, defined, see section 44-4303.

48-146.01 Transferred to section 44-3,158.

48-146.02 Insurance provider; risk management pool; suspension or revocation of authority to provide compensation insurance; Attorney General; duties; grounds.

(1)(a) If a three-judge panel of the Nebraska Workers' Compensation Court finds, after due notice and hearing at which the workers' compensation insurer is entitled to be heard and present evidence, that such insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may request the Director of Insurance to suspend or revoke the authorization of such insurer to write workers' compensation insurance under the provisions of Chapter 44 and such act. Such suspension or revocation shall not affect the liability of any such insurer under policies in force prior to the suspension or revocation.

(b) If a three-judge panel of the compensation court finds, after due notice and hearing at which the risk management pool is entitled to be heard and present evidence, that such pool has failed to comply with an obligation under the Nebraska Workers' Compensation Act, as set out in subsection (1) of section 44-4319, with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may suspend or revoke the authority of the pool to provide group self-insurance coverage of workers' compensation liability pursuant to the Intergovernmental Risk Management Act. Such suspension or revocation shall not affect the liability of any such risk management pool under the terms of the agreement forming the pool in force prior to the suspension or revocation.

(c) If a three-judge panel of the compensation court finds, after due notice and hearing at which the self-insurer is entitled to be heard and present evidence, that such self-insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may revoke the approval of such self-insurer to provide self-insurance coverage of workers' compensation liability pursuant to section 48-145. Such revocation shall not affect the liability of any such self-insurer under an

approval by the compensation court to self-insure in force prior to the revocation.

(d) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a workers' compensation insurer, risk management pool, or self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not take action pursuant to this subsection. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the workers' compensation insurer, risk management pool, or self-insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel.

(e) Appeal from an action by a three-judge panel of the compensation court pursuant to subdivision (1)(b) or (1)(c) of this section shall be in accordance with section 48-185.

(2) In addition to any other obligations under the Nebraska Workers' Compensation Act, the following acts or practices, when committed with such frequency as to indicate a general business practice to engage in that type of conduct, shall subject the workers' compensation insurer, risk management pool, or self-insurer to action pursuant to subsection (1) of this section:

(a) Knowingly misrepresenting relevant facts or the provisions of the act or any rule or regulation adopted pursuant to such act;

(b) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under the act;

(c) Failing to promptly investigate claims arising under the act;

(d) Not attempting in good faith to effectuate prompt, fair, and equitable payment of benefits when compensability has become reasonably clear;

(e) Refusing to pay benefits without conducting a reasonable investigation;

(f) Failing to affirm or deny compensability of a claim within a reasonable time after having completed the investigation related to such claim;

(g) Paying substantially less than amounts owed under the act where there is no reasonable controversy;

(h) Making payment to an injured employee, beneficiary of a deceased employee, or provider of medical, surgical, or hospital services without providing a reasonable and accurate explanation of the basis for the payment;

(i) Unreasonably delaying the investigation or payment of benefits by knowingly requiring excessive verification or duplication of information;

(j) Failing, in the case of the denial of compensability or the denial, change in, or termination of benefits, to promptly provide a reasonable and accurate explanation of the basis for such action to the injured employee or beneficiary of a deceased employee;

(k) Failing, in the case of the denial of payment for medical, surgical, or hospital services, to promptly provide a reasonable and accurate explanation of the basis for such action to the provider of such services; or

(l) Failing to provide the compensation court's address and telephone number to an injured employee or beneficiary of a deceased employee with instructions to contact the court for further information:

(i) At or near the time the workers' compensation insurer, risk management pool, or self-insurer receives notice or has knowledge of the injury; and

(ii) At or near the time of the denial of compensability or the denial, change in, or termination of benefits.

(3) In order to determine compliance with obligations under the Nebraska Workers' Compensation Act, the compensation court or its designee may examine the workers' compensation records of (a) a workers' compensation insurer, a risk management pool, or a self-insurer or (b) an adjuster, a third-party administrator, or other agent acting on behalf of such workers' compensation insurer, risk management pool, or self-insurer. The authority of the compensation court pursuant to this subsection is subject to the limitations provided under the work-product doctrine and attorney-client privilege as recognized in Nebraska law.

(4) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Source: Laws 1971, LB 572, § 16; Laws 1986, LB 811, § 73; Laws 1987, LB 398, § 45; Laws 1999, LB 331, § 2; Laws 2005, LB 13, § 12.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.
Risk management pool, defined, see section 44-4303.

48-146.03 Workers' compensation insurance policy; deductible options; exception; liability; insurer; duties; prohibited acts; violation; penalty.

(1) Each workers' compensation insurance policy issued by an insurer pursuant to the Nebraska Workers' Compensation Act:

(a) Shall offer, at the option of the insured employer, a deductible for medical benefits in the amount of five hundred dollars to two thousand five hundred dollars per claim in increments of five hundred dollars; or

(b) May offer, at the option of the insured employer and the workers' compensation insurer, a deductible for all amounts paid by the insurer as long as the deductible is not more than forty percent of the insured employer's otherwise applicable annual workers' compensation insurance premium at rates approved for the insurer but not less than fifty thousand dollars.

The insured employer, if choosing to exercise one of such options listed in this subsection, may choose only one of the amounts as the deductible. The provisions of this section shall be fully disclosed to each prospective purchaser in writing.

(2) The deductible form shall provide that the workers' compensation insurer shall remain liable for and shall pay the entire cost of medical benefits for each claim directly to the medical provider, shall remain liable for and pay the entire cost of benefits, claims, and expenses as required by the policy irrespective of the deductible provision, and shall then be reimbursed by the employer for any deductible amounts paid by the workers' compensation insurer. The employer shall be liable for reimbursement up to the limit of the deductible.

(3) A workers' compensation insurer shall not be required to offer a deductible if, as a result of a credit investigation, the insurer determines that the

employer does not have the financial ability to be responsible for the payment of deductible amounts.

(4) A workers' compensation insurer shall service and, if necessary, defend all claims that arise during the policy period, including those claims payable in whole or in part from the deductible amount, and shall make such reports to the compensation court of payments made, including payments made under the deductible provisions, as may be required by the compensation court.

(5) A person who is employed by a policyholder which chooses to exercise the option of a deductible policy shall not be required to pay any of the deductible amount, and any such policyholder shall not require or attempt to require the employee to give up his or her right of selection of physician set out in section 48-120. Any violation of this subsection shall be a Class II misdemeanor.

Source: Laws 1990, LB 313, § 2; Laws 1992, LB 1006, § 94; Laws 2005, LB 238, § 12.

PART III—MISCELLANEOUS PROVISIONS

48-151 Terms, defined.

Throughout the Nebraska Workers' Compensation Act, the following words and phrases shall be considered to have the following meaning, respectively, unless the context clearly indicates a different meaning in the construction used:

(1) Physician means any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry in the State of Nebraska or in the state in which the physician is practicing;

(2) Accident means an unexpected or unforeseen injury happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. The claimant has the burden of proof to establish by a preponderance of the evidence that such unexpected or unforeseen injury was in fact caused by the employment. There is no presumption from the mere occurrence of such unexpected or unforeseen injury that the injury was in fact caused by the employment;

(3) Occupational disease means only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment and excludes all ordinary diseases of life to which the general public is exposed;

(4) Injury and personal injuries mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom and personal injuries described in section 48-101.01. The terms include disablement resulting from occupational disease arising out of and in the course of the employment in which the employee was engaged and which was contracted in such employment. The terms include an aggravation of a preexisting occupational disease, the employer being liable only for the degree of aggravation of the preexisting occupational disease. The terms do not include disability or death due to natural causes but occurring while the employee is at work and do not include an injury, disability, or death that is the result of a natural progression of any preexisting condition;

(5) Death, when mentioned as a basis for the right to compensation, means only death resulting from such violence and its resultant effects or from occupational disease;

(6) Without otherwise affecting either the meaning or the interpretation of the abridged clause, personal injuries arising out of and in the course of employment, it is hereby declared not to cover workers except while engaged in, on, or about the premises where their duties are being performed or where their service requires their presence as a part of such service at the time of the injury and during the hours of service as such workers, and not to cover workers who on their own initiative leave their line of duty or hours of employment for purposes of their own. Property maintained by an employer is considered the premises of such employer for purposes of determining whether the injury arose out of employment;

(7) Willful negligence consists of (a) a deliberate act, (b) such conduct as evidences reckless indifference to safety, or (c) intoxication at the time of the injury, such intoxication being without the consent, knowledge, or acquiescence of the employer or the employer's agent;

(8) Intoxication includes, but is not limited to, being under the influence of a controlled substance not prescribed by a physician;

(9) Prospective loss costs means prospective loss costs as defined in section 44-7504 and prepared, filed, or distributed by an advisory organization which has been issued a certificate of authority pursuant to section 44-7518;

(10) Client means client as defined in section 48-2702;

(11) Professional employer organization means professional employer organization as defined in section 48-2702;

(12) Multiple coordinated policy means multiple coordinated policy as defined in section 48-2702;

(13) Master policy means master policy as defined in section 48-2702; and

(14) Whenever in the Nebraska Workers' Compensation Act the singular is used, the plural is considered included; when the masculine gender is used, the feminine is considered included.

Source: Laws 1913, c. 198, § 52, p. 601; R.S.1913, § 3693; Laws 1917, c. 85, § 23, p. 216; Laws 1921, c. 122, § 1, p. 528; C.S.1922, § 3075; C.S.1929, § 48-152; Laws 1935, c. 57, § 42, p. 211; Laws 1937, c. 107, § 1, p. 367; C.S.Supp.,1941, § 48-152; Laws 1943, c. 113, § 3, p. 398; R.S.1943, § 48-151; Laws 1947, c. 174, § 2, p. 560; Laws 1963, c. 284, § 3, p. 852; Laws 1963, c. 287, § 1, p. 862; Laws 1986, LB 811, § 78; Laws 1993, LB 757, § 15; Laws 1998, LB 1010, § 4; Laws 1999, LB 216, § 12; Laws 2000, LB 1119, § 40; Laws 2010, LB579, § 18; Laws 2010, LB780, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB579, section 18, with LB780, section 2, to reflect all amendments.

Note: Changes made by LB780 became effective July 15, 2010. Changes made by LB579 became operative July 15, 2010.

Note: For applicability of changes made by Laws 2010, LB780, see section 48-1,111.

PART IV—NEBRASKA WORKERS' COMPENSATION COURT

48-152 Nebraska Workers' Compensation Court; creation; jurisdiction; judges; selected or retained in office.

Recognizing that (1) industrial relations between employers and employees within the State of Nebraska are affected with a vital public interest, (2) an impartial and efficient administration of the Nebraska Workers' Compensation Act is essential to the prosperity and well-being of the state, and (3) suitable

laws should be enacted for the establishing and for the preservation of such an administration of the Nebraska Workers' Compensation Act, there is hereby created, pursuant to the provisions of Article V, section 1, of the Nebraska Constitution, a court, consisting of seven judges, to be selected or retained in office in accordance with the provisions of Article V, section 21, of the Nebraska Constitution and to be known as the Nebraska Workers' Compensation Court, which court shall have authority to administer and enforce all of the provisions of the Nebraska Workers' Compensation Act, and any amendments thereof, except such as are committed to the courts of appellate jurisdiction or as otherwise provided by law.

Source: Laws 1935, c. 57, § 1, p. 188; C.S.Supp.,1941, § 48-162; R.S. 1943, § 48-152; Laws 1949, c. 161, § 3, p. 412; Laws 1965, c. 280, § 1, p. 806; Laws 1967, c. 292, § 1, p. 797; Laws 1975, LB 187, § 9; Laws 1983, LB 18, § 2; Laws 1986, LB 811, § 79; Laws 1988, LB 868, § 1; Laws 2005, LB 13, § 13.

48-155 Presiding judge; how chosen; term; powers and duties; acting presiding judge; selection; powers.

The judges of the Nebraska Workers' Compensation Court shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding judge for the next two years, subject to approval of the Supreme Court. The presiding judge may designate one of the other judges to act as presiding judge in his or her stead whenever necessary during the disqualification, disability, or absence of the presiding judge. The presiding judge shall rule on all matters submitted to the compensation court except those arising in the course of original or review hearings or as otherwise provided by law, assign or direct the assignment of the work of the compensation court to the several judges, clerk, and employees who support the judicial proceedings of the compensation court, preside at such meetings of the judges of the compensation court as may be necessary, and perform such other supervisory duties as the needs of the compensation court may require. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

Source: Laws 1935, c. 57, § 4, p. 189; C.S.Supp.,1941, § 48-165; R.S. 1943, § 48-155; Laws 1945, c. 113, § 2, p. 364; Laws 1959, c. 225, § 1, p. 791; Laws 1969, c. 396, § 1, p. 1386; Laws 1986, LB 811, § 84; Laws 1992, LB 360, § 15; Laws 2000, LB 1221, § 10; Laws 2005, LB 13, § 14.

48-155.01 Judges; appointment of acting judge; compensation.

(1) The Governor may, by single order, appoint a qualified person meeting the eligibility requirements of section 48-153.01 to serve as acting judge of the Nebraska Workers' Compensation Court. Such appointment shall be for a period of two years. In determining whether a person is qualified to serve as acting judge of the compensation court, the Governor shall consider the person's knowledge of the law, experience in the legal system, intellect, capacity for fairness, probity, temperament, and industry. The acting judge shall be subject to call by the presiding judge of the compensation court, who may assign the acting judge to temporary duty in order to (a) sit in the compensation court to relieve a congested docket of the court or to prevent the docket from

becoming congested or (b) sit for a judge of the court who may be incapacitated or absent for any reason. An acting judge appointed and assigned pursuant to this section shall possess the same powers and be subject to the duties, restrictions, and liabilities as are prescribed by law respecting judges of the compensation court, except that an acting judge is not prohibited from practicing law as provided in section 7-111.

(2) The acting judge shall receive for each day of temporary duty an amount equal to one-twentieth of the monthly salary he or she would receive if he or she were a regularly appointed judge of the compensation court and shall be reimbursed for his or her expenses while on temporary duty at the same rate as provided in sections 81-1174 to 81-1177. Within fifteen days following completion of a temporary duty assignment, the acting judge shall submit to the presiding judge of the compensation court a request for payment or reimbursement for services rendered and expenses incurred during such temporary duty assignment. Upon receipt of such request, the presiding judge shall endorse on the request that the services were performed and expenses incurred pursuant to an assignment of the presiding judge of the compensation court and file such request with the proper authority for payment.

(3) The acting judge shall not pay into the Nebraska Retirement Fund for Judges nor be eligible for retirement benefits under the Judges Retirement Act.

Source: Laws 1959, c. 226, § 1, p. 792; Laws 1981, LB 204, § 79; Laws 1986, LB 811, § 85; Laws 1994, LB 833, § 27; Laws 2004, LB 1097, § 22; Laws 2005, LB 238, § 13.

Cross References

Judges Retirement Act, see section 24-701.01.

48-157 Clerk; administrator; appointment; duties.

(1) The presiding judge of the Nebraska Workers' Compensation Court shall appoint a clerk of the compensation court and such employees as the compensation court deems necessary to support the judicial proceedings of the compensation court, subject to approval of the compensation court. The clerk and employees supporting the judicial proceedings of the compensation court shall serve at the pleasure of the compensation court and shall perform such duties pertaining to the affairs of the court as the compensation court may prescribe or as otherwise provided by law.

(2) The presiding judge shall, subject to approval of the compensation court, appoint an administrator of the compensation court, who shall be the chief administrative officer of the compensation court. The administrator shall serve at the pleasure of the compensation court and shall perform such duties pertaining to affairs of the compensation court as the presiding judge may prescribe or as otherwise provided by law. The administrator shall appoint such other employees as the administrator deems necessary to carry out the duties of the administrator, subject to approval of the presiding judge. Employees appointed by the administrator shall serve at the pleasure of the administrator and shall perform such duties as the administrator may prescribe.

(3) The clerk shall, under the direction of the presiding judge, keep a full and true record of the judicial proceedings of the compensation court, record all pleadings and other documents filed with the compensation court, and issue all necessary notices and writs. No action shall be taken on any pleading or other document filed with the compensation court until the same has been recorded

by the clerk. At the time a petition or motion is filed the clerk shall, on a rotating basis, assign one of the judges of the compensation court to hear the cause.

(4) The clerk may, under the direction of the presiding judge, make or cause to be made preservation duplicates of any record relating to the judicial proceedings of the compensation court. The original record may be destroyed, but only with the approval of the State Records Administrator pursuant to the Records Management Act. The reproduction of the preservation duplicates shall be admissible as evidence in any court of record in the State of Nebraska and, when duly certified, shall be evidence of equal credibility with the original record.

(5) Notices of hearings, notices of continuances, and summonses may be destroyed without preparing preservation duplicates after a record of their issuance has been made in the docket book. A reproduction of the page of the docket book or of the preservation duplicate of the page of the docket book showing such record and, in the case of summonses, showing issuance or return of the summons, when duly certified, shall be evidence of equal credibility with the original notice or summons. Correspondence, exhibits, and other documents relating to the judicial proceedings of the compensation court which the clerk deems to be irrelevant, unimportant, or superfluous may be destroyed without preparing preservation duplicates.

Source: Laws 1935, c. 57, § 7, p. 190; C.S.Supp.,1941, § 48-168; R.S. 1943, § 48-157; Laws 1945, c. 238, § 20, p. 713; Laws 1945, c. 113, § 4, p. 365; Laws 1951, c. 311, § 2, p. 1066; Laws 1969, c. 388, § 4, p. 1363; Laws 1975, LB 194, § 1; Laws 1983, LB 263, § 1; Laws 1986, LB 811, § 87; Laws 1997, LB 128, § 3; Laws 2005, LB 13, § 15.

Cross References

Records Management Act, see section 84-1220.

48-158 Judges; administrator; clerk; bond or insurance; oath.

Each of the judges of the Nebraska Workers' Compensation Court, the administrator of the compensation court, and the clerk of the compensation court shall, before entering upon or discharging any of the duties of his or her office, be bonded or insured as required by section 11-201 and such judges, administrator, and clerk shall, before entering upon the duties of their offices, take and subscribe the statutory oath of office.

Source: Laws 1935, c. 57, § 8, p. 191; C.S.Supp.,1941, § 48-169; R.S. 1943, § 48-158; Laws 1978, LB 653, § 9; Laws 1986, LB 811, § 88; Laws 2004, LB 884, § 20; Laws 2005, LB 13, § 16.

48-159 Nebraska Workers' Compensation Court; judges; employees; salary; expenses.

(1) As soon as the same may be legally paid under the Constitution of Nebraska, each judge of the Nebraska Workers' Compensation Court shall receive an annual salary of ninety-two and one-half percent of the salary set for the Chief Justice and judges of the Supreme Court, payable in the same manner as the salaries of other state officers are paid. The administrator, the clerk, and all other employees of the compensation court shall receive such salaries as the

compensation court shall determine, but not to exceed the amount of the appropriation made by the Legislature for such purpose. Such salaries shall be payable in the same manner as the salaries of other state employees are paid. The administrator, clerk, and other employees of the compensation court shall not receive any other salary or pay for their services from any other source.

(2) In addition to the salaries as provided by subsection (1) of this section, the judges of the Nebraska Workers' Compensation Court and the administrator, clerk, and other employees of the compensation court shall be entitled, while traveling on the business of the compensation court, to be reimbursed by the state for their necessary traveling expenses, consisting of transportation, subsistence, lodging, and such other items of expense as are necessary, to be paid as provided in sections 81-1174 to 81-1177.

Source: Laws 1935, c. 57, § 9, p. 191; C.S.Supp.,1941, § 48-170; R.S. 1943, § 48-159; Laws 1945, c. 113, § 12, p. 368; Laws 1947, c. 174, § 3, p. 562; Laws 1951, c. 154, § 1, p. 624; Laws 1953, c. 164, § 1, p. 515; Laws 1957, c. 206, § 1, p. 725; Laws 1959, c. 227, § 1, p. 794; Laws 1963, c. 289, § 1, p. 866; Laws 1965, c. 281, § 1, p. 808; Laws 1967, c. 293, § 1, p. 799; Laws 1969, c. 397, § 1, p. 1387; Laws 1972, LB 1293, § 4; Laws 1974, LB 923, § 4; Laws 1976, LB 76, § 5; Laws 1978, LB 672, § 5; Laws 1979, LB 398, § 5; Laws 1981, LB 204, § 80; Laws 1981, LB 111, § 5; Laws 1986, LB 811, § 89; Laws 1997, LB 853, § 2; Laws 2005, LB 13, § 17.

48-162 Compensation court; duties; powers.

(1) The Nebraska Workers' Compensation Court, or any judge thereof, is authorized and empowered to examine under oath or otherwise any person, employee, employer, agent, superintendent, supervisor, or officer of any partnership, limited liability company, or corporation, any officer of any domestic insurance company, any agent of any foreign insurance company, or any medical practitioner, to issue subpoenas for the appearance of witnesses and the production of books and papers, to solemnize marriages, and to administer oaths with like effect as is done in other courts of law in this state. In the examination of any witness and in requiring the production of books, papers, and other evidence, the compensation court shall have and exercise all of the powers of a judge, magistrate, or other officer in the taking of depositions or the examination of witnesses, including the power to enforce his or her orders by commitment for refusal to answer or for the disobedience of any such order.

(2) The compensation court or any judge thereof may, upon the motion of either party or upon its or his or her own motion, require the production of any books, documents, payrolls, medical reports, X-rays, photographs, or plates or any facts or matters which may be necessary to assist in a determination of the rights of either party in any matter pending before the compensation court or any judge thereof.

(3) The compensation court or any judge thereof may expedite the hearing of a disputed case when there is an emergency.

Source: Laws 1917, c. 85, § 27, p. 218; Laws 1921, c. 122, § 2, p. 530; C.S.1922, § 3076; C.S.1929, § 48-153; Laws 1935, c. 57, § 34, p. 204; C.S.Supp.,1941, § 48-153; R.S.1943, § 48-162; Laws 1983,

LB 263, § 2; Laws 1983, LB 18, § 5; Laws 1986, LB 811, § 93; Laws 1987, LB 187, § 2; Laws 1993, LB 121, § 284; Laws 1993, LB 757, § 16; Laws 2005, LB 13, § 18.

48-162.01 Employees; rehabilitation services; directory of service providers, counselors, and specialists; vocational rehabilitation plan; priorities; Attorney General; duties; compensation court; powers; duties.

(1) One of the primary purposes of the Nebraska Workers' Compensation Act is restoration of the injured employee to gainful employment. To this end the Nebraska Workers' Compensation Court may employ one or more specialists in vocational rehabilitation. Salaries, other benefits, and administrative expenses incurred by the compensation court for purposes of vocational rehabilitation shall be paid from the Compensation Court Cash Fund.

(2) Vocational rehabilitation specialists employed by the court shall continuously study the problems of vocational rehabilitation and shall maintain a directory of individual service providers, counselors, and specialists which have been approved by the Nebraska Workers' Compensation Court. The compensation court may approve as qualified such individual service providers, counselors, and specialists as are capable of rendering competent vocational rehabilitation services to injured employees. No individual service provider, counselor, or specialist shall be considered qualified to provide vocational rehabilitation services to injured employees unless he or she has satisfied the standards for certification established by the compensation court and has been certified by the compensation court.

(3) When as a result of the injury an employee is unable to perform suitable work for which he or she has previous training or experience, he or she is entitled to such vocational rehabilitation services, including job placement and training, as may be reasonably necessary to restore him or her to suitable employment. Vocational rehabilitation training costs shall be paid from the Workers' Compensation Trust Fund. When vocational rehabilitation training requires residence at or near a facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Workers' Compensation Trust Fund.

If entitlement to vocational rehabilitation services is claimed by the employee, the employee and the employer or his or her insurer shall attempt to agree on the choice of a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. If they are unable to agree on a vocational rehabilitation counselor, the employee or employer or his or her insurer shall notify the compensation court, and a vocational rehabilitation specialist of the compensation court shall select a counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. Only one such vocational rehabilitation counselor may provide vocational rehabilitation services at any one time, and any change in the choice of a vocational rehabilitation counselor shall be approved by a vocational rehabilitation specialist or judge of the compensation court. The vocational rehabilitation counselor so chosen or selected shall evaluate the employee and, if necessary, develop and implement a vocational rehabilitation plan. Any such plan shall be evaluated by a vocational rehabilitation specialist of the compensation court and approved by such

specialist or a judge of the compensation court prior to implementation. In evaluating a plan the specialist shall make an independent determination as to whether the proposed plan is likely to result in suitable employment for the injured employee that is consistent with the priorities listed in this subsection. It is a rebuttable presumption that any vocational rehabilitation plan developed by such vocational rehabilitation counselor and approved by a vocational rehabilitation specialist of the compensation court is an appropriate form of vocational rehabilitation. The fee for the evaluation and for the development and implementation of the vocational rehabilitation plan shall be paid by the employer or his or her workers' compensation insurer. The compensation court may establish a fee schedule for services rendered by a vocational rehabilitation counselor. Any loss-of-earning-power evaluation performed by a vocational rehabilitation counselor shall be performed by a counselor from the directory established pursuant to subsection (2) of this section and chosen or selected according to the procedures described in this subsection. It is a rebuttable presumption that any opinion expressed as the result of such a loss-of-earning-power evaluation is correct.

The following priorities shall be used in developing and evaluating a vocational rehabilitation plan. No higher priority may be utilized unless all lower priorities have been determined by the vocational rehabilitation counselor and a vocational rehabilitation specialist or judge of the compensation court to be unlikely to result in suitable employment for the injured employee that is consistent with the priorities listed in this subsection. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized. The priorities are, listed in order from lower to higher priority:

(a) Return to the previous job with the same employer;

(b) Modification of the previous job with the same employer;

(c) A new job with the same employer;

(d) A job with a new employer; or

(e) A period of formal training which is designed to lead to employment in another career field.

(4) The compensation court may cooperate on a reciprocal basis with federal and state agencies for vocational rehabilitation services or with any public or private agency.

(5) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 regarding any issue related to vocational rehabilitation services or costs pursuant to this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may initiate an original action before the compensation court or may intervene in a pending action and become a party to the litigation. Any such motion shall be heard by a judge of the compensation court other than the presiding judge.

(6) An employee who has suffered an injury covered by the Nebraska Workers' Compensation Act is entitled to prompt physical and medical rehabilitation services. If physical or medical rehabilitation services are not voluntarily offered and accepted, the compensation court or any judge thereof on its or his or her own motion, or upon application of the employee or employer, and after affording the parties an opportunity to be heard by the compensation court or judge thereof, may refer the employee to a facility, institution, physician, or

other individual service provider capable of rendering competent physical or medical rehabilitation services for evaluation and report of the practicability of, need for, and kind of service or treatment necessary and appropriate to render him or her fit for a remunerative occupation, and the costs of such evaluation and report involving physical or medical rehabilitation shall be borne by the employer or his or her workers' compensation insurer. Upon receipt of such report and after affording the parties an opportunity to be heard, the compensation court or judge thereof may order that the physical or medical services and treatment recommended in the report or other necessary physical or medical rehabilitation treatment or service be provided at the expense of the employer or his or her workers' compensation insurer.

When physical or medical rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid for by the employer or his or her workers' compensation insurer in addition to any other benefits payable under the Nebraska Workers' Compensation Act, including weekly compensation benefits for temporary disability.

(7) If the injured employee without reasonable cause refuses to undertake or fails to cooperate with a physical, medical, or vocational rehabilitation program determined by the compensation court or judge thereof to be suitable for him or her or refuses to be evaluated under subsection (3) or (6) of this section or fails to cooperate in such evaluation, the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act. The compensation court or judge thereof may also modify a previous finding, order, award, or judgment relating to physical, medical, or vocational rehabilitation services as necessary in order to accomplish the goal of restoring the injured employee to gainful and suitable employment, or as otherwise required in the interest of justice.

Source: Laws 1969, c. 388, § 1, p. 1357; Laws 1974, LB 808, § 2; Laws 1983, LB 266, § 1; Laws 1986, LB 811, § 94; Laws 1993, LB 757, § 17; Laws 1997, LB 128, § 4; Laws 1999, LB 216, § 14; Laws 2000, LB 1221, § 11; Laws 2004, LB 1091, § 3; Laws 2005, LB 13, § 19.

48-162.02 Workers' Compensation Trust Fund; created; use; contributions; Attorney General; Department of Administrative Services; duties.

(1) The Workers' Compensation Trust Fund is created. The fund shall be administered by the administrator of the Nebraska Workers' Compensation Court.

(2) The Workers' Compensation Trust Fund shall be used to make payments in accordance with sections 48-128 and 48-162.01. Payments from the fund shall be made in the same manner as for claims against the state. The State Treasurer shall be the custodian of the fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The fund shall be raised and derived as follows: Every insurance company which is transacting business in this state shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state. Every risk management pool providing workers'

compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(3) The computation of the amounts as provided in subsection (2) of this section shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies and pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department. Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid.

(4) The Director of Insurance, after notice and hearing in accordance with the Administrative Procedure Act, may rescind or refuse to reissue the certificate of authority of any company or pool which fails to remit the amount due.

(5) The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Workers' Compensation Trust Fund promptly upon completion of the audit and examination and in no event later than May 1 of the year in which the amounts have been received, except that (a) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account until disposition of the controversy and (b) one percent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

(6) Every employer in the occupations described in section 48-106 who qualifies as a self-insurer and who is issued a permit to self-insure shall remit to the State Treasurer for credit to the Workers' Compensation Trust Fund an annual amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(7) The amounts required to be paid by the insurance companies, risk management pools, and self-insurers under subsections (2) and (6) of this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

(8) The administrator of the compensation court shall be charged with the conservation of the assets of the Workers' Compensation Trust Fund. The administrator may order payments from the fund for vocational rehabilitation services and costs pursuant to section 48-162.01 when (a) vocational rehabilitation is voluntarily offered by the employer and accepted by the employee, (b) the employee is engaged in an approved vocational rehabilitation plan pursuant to section 48-162.01, and (c) the employer has agreed to pay weekly compensation benefits for temporary disability while the employee is engaged in such plan.

(9) The Attorney General shall represent the fund when requested by the administrator in proceedings brought by or against the fund pursuant to section 48-162.01. The Attorney General shall represent the fund in all proceedings brought by or against the fund pursuant to section 48-128. When a claim is made by or against the fund pursuant to section 48-128, the State of Nebraska shall be impleaded as a party plaintiff or defendant, as the case may require,

and when so impleaded as a defendant, service shall be had upon the Attorney General.

(10) The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Workers' Compensation Trust Fund setting forth the balance of the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance of the fund on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise by reason of any payment made from the fund.

(11) When the fund equals or exceeds two million three hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance companies. Thereafter whenever the amount of the fund is reduced below one million two hundred thousand dollars by reason of payments made pursuant to this section or otherwise or whenever the administrator of the compensation court determines that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below one million two hundred thousand dollars, the administrator shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance companies and risk management pools, that such contributions are to be resumed as of the date set in such notice and such contributions shall continue as provided in this section after the effective date of such notice. Such contributions shall continue until the fund again equals two million three hundred thousand dollars.

(12) Any expenses necessarily incurred by the Workers' Compensation Trust Fund or by the Attorney General in connection with a proceeding brought by or against the fund may be paid out of the fund. Such expenses may be taxed as costs and recovered by the fund in any case in which the fund prevails.

Source: Laws 1974, LB 808, § 3; Laws 1986, LB 811, § 95; Laws 1987, LB 398, § 46; Laws 1988, LB 1034, § 2; Laws 1992, LB 1006, § 95; Laws 1993, LB 757, § 18; Laws 2000, LB 1221, § 12; Laws 2004, LB 1091, § 4; Laws 2005, LB 13, § 20; Laws 2007, LB322, § 8.

Cross References

Administrative Procedure Act, see section 84-920.
Risk management pool, defined, see section 44-4303.

48-163 Compensation court; rules and regulations; procedures for adoption; powers and duties.

(1) The Nebraska Workers' Compensation Court, by a majority vote of the judges thereof, may adopt and promulgate all reasonable rules and regulations necessary for carrying out the intent and purpose of the Nebraska Workers' Compensation Act, except that rules and regulations relating to the compensation court's adjudicatory function shall become effective only upon approval of the Supreme Court.

(2) No rule or regulation to carry out the act shall be adopted and promulgated except after public hearing conducted by a quorum of the compensation court on the question of adopting and promulgating such rule or regulation.

Notice of such hearing shall be given at least thirty days prior thereto by publication in a newspaper having general circulation in the state. Draft copies of all such rules and regulations shall be available to the public at the compensation court at the time of giving notice.

(3) The administrator of the compensation court shall establish and maintain a list of subscribers who wish to receive notice of public hearing on the question of adopting and promulgating any rule or regulation and shall provide notice to such subscribers. The administrator shall distribute a current copy of existing rules and regulations and any updates to those rules and regulations once adopted to the State Library and to each county law library or the largest public library in each county.

Source: Laws 1935, c. 57, § 6, p. 190; C.S.Supp.,1941, § 48-167; R.S. 1943, § 48-163; Laws 1975, LB 187, § 11; Laws 1986, LB 811, § 96; Laws 1992, LB 360, § 17; Laws 1993, LB 757, § 24; Laws 1999, LB 216, § 15; Laws 2005, LB 13, § 21.

48-165 Blank forms; distribution; fees; telephone number.

(1) The administrator of the Nebraska Workers' Compensation Court shall prepare and make available to employees, employers, and workers' compensation insurers such blank forms as deemed proper and advisable.

(2) The administrator of the compensation court may establish a schedule of fees for services including, but not limited to, copying, reproducing documents from preservation duplicates, preparing forms and other material, responding to inquiries for information, and preparing publications. In establishing fees, the administrator may consider costs for time, material, and delivery.

(3) The administrator of the compensation court may maintain a toll-free telephone number and assign staff members of the compensation court to respond to inquiries from employees, employers, and others regarding the operation of the Nebraska Workers' Compensation Act and to provide information regarding the rights, benefits, and obligations of injured employees and their employers under the act.

Source: Laws 1917, c. 85, § 29, p. 221; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 206; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-165; Laws 1949, c. 161, § 4, p. 412; Laws 1983, LB 263, § 3; Laws 1986, LB 811, § 98; Laws 2005, LB 13, § 22.

48-168 Compensation court; rules of evidence; procedure; informal dispute resolution; procedure.

(1) The Nebraska Workers' Compensation Court shall not be bound by the usual common-law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided, but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the Nebraska Workers' Compensation Act.

(2)(a) The Nebraska Workers' Compensation Court may establish procedures whereby a dispute may be submitted by the parties, by the provider of medical, surgical, or hospital services pursuant to section 48-120, by a vocational rehabilitation counselor certified pursuant to section 48-162.01, or by the

compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or outside mediator. Any party who requests such informal dispute resolution shall not be precluded from filing a petition pursuant to section 48-173 if otherwise permitted. If informal dispute resolution is ordered by the compensation court on its own motion, the compensation court may state a date for the case to return to court. Such date shall be no longer than ninety days after the date the order was signed unless the court grants an extension upon request of the parties. No settlement reached as the result of an informal dispute resolution proceeding shall be final or binding unless such settlement is in conformity with the Nebraska Workers' Compensation Act. Any such settlement shall be voluntarily entered into by the parties.

(b)(i) Except as permitted in subdivision (b)(ii) of this subsection, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a judge of the compensation court that may make a ruling on the dispute that is the subject of the mediation.

(ii) A mediator may disclose:

(A) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance; and

(B) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(iii) A communication made in violation of subdivision (b)(i) of this subsection shall not be considered by a judge of the compensation court.

(c) Informal dispute resolution proceedings shall be regarded as settlement negotiations and no admission, representation, or statement made in informal dispute resolution proceedings, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery. A staff member or mediator shall not be subject to process requiring the disclosure of any matter discussed during informal dispute resolution proceedings. Any information from the files, reports, notes of the staff member or mediator, or other materials or communications, oral or written, relating to an informal dispute resolution proceeding obtained by a staff member or mediator is privileged and confidential and may not be disclosed without the written consent of all parties to the proceeding. No staff member or mediator shall be held liable for civil damages for any statement or decision made in the process of dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

(d) The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution proceedings that are considered necessary to effectuate the purposes of this section.

Source: Laws 1917, c. 85, § 29, p. 220; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 205; C.S.Supp.,1941, § 48-157; R.S.1943, § 48-168; Laws 1986, LB 811, § 101; Laws 1993, LB 757, § 25; Laws 2006, LB 489, § 34; Laws 2009, LB630, § 10.

48-177 Hearing; judge; place; dismissal; procedure.

At the time a petition or motion is filed, one of the judges of the Nebraska Workers' Compensation Court shall be assigned to hear the cause. It shall be

heard in the county in which the accident occurred, except as otherwise provided in section 25-412.02 and except that, upon the written stipulation of the parties, filed with the compensation court at least fourteen days before the date of hearing, the cause may be heard in any other county in the state. An action may be dismissed by the plaintiff, if represented by legal counsel, without prejudice to a future action, before the final submission of the case to the compensation court. Upon a motion for dismissal duly filed by the plaintiff, showing that a dispute between the parties no longer exists, the compensation court may dismiss any such cause without a hearing thereon.

Source: Laws 1935, c. 57, §§ 13, 15, pp. 193, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-177; Laws 1945, c. 113, § 8, p. 366; Laws 1949, c. 161, § 5, p. 413; Laws 1975, LB 97, § 8; Laws 1978, LB 649, § 8; Laws 1986, LB 811, § 109; Laws 1997, LB 128, § 6; Laws 2005, LB 13, § 29.

48-178 Hearing; judgment; when conclusive; record of proceedings; costs; payment.

The judge shall make such findings and orders, awards, or judgments as the Nebraska Workers' Compensation Court or judge is authorized by law to make. Such findings, orders, awards, and judgments shall be signed by the judge before whom such proceedings were had. When proceedings are had before a judge of the compensation court, his or her findings, orders, awards, and judgments shall be conclusive upon all parties at interest unless reversed or modified upon review or appeal as hereinafter provided. A shorthand record or tape recording shall be made of all testimony and evidence submitted in such proceedings. The compensation court or judge thereof, at the party's expense, may appoint a court reporter or may direct a party to furnish a court reporter to be present and report or, by adequate mechanical means, to record and, if necessary, transcribe proceedings of any hearing. The charges for attendance shall be paid initially to the reporter by the employer or, if insured, by the employer's workers' compensation insurer. The charges shall be taxed as costs and the party initially paying the expense shall be reimbursed by the party or parties taxed with the costs. The compensation court or judge thereof may award and tax such costs and apportion the same between the parties or may order the compensation court to pay such costs as in its discretion it may think right and equitable. If the expense is unpaid, the expense shall be paid by the party or parties taxed with the costs or may be paid by the compensation court. The reporter shall faithfully and accurately report or record the proceedings.

Source: Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-178; Laws 1945, c. 113, § 9, p. 367; Laws 1986, LB 811, § 110; Laws 1992, LB 360, § 20; Laws 2005, LB 238, § 14.

48-178.01 Payment of compensation when claimant's right to compensation not in issue.

Whenever any petition is filed and the claimant's right to compensation is not in issue, but the issue of liability is raised as between an employer, a workers' compensation insurer, or a risk management pool or between two or more employers, workers' compensation insurers, or risk management pools, the Nebraska Workers' Compensation Court may order payment of compensation to be made immediately by one or more of such employers, workers' compensa-

tion insurers, or risk management pools. When the issue is finally resolved, an employer, workers' compensation insurer, or risk management pool held not liable shall be reimbursed for any such payments by the employer, workers' compensation insurer, or risk management pool held liable.

Source: Laws 1971, LB 572, § 17; Laws 1986, LB 811, § 111; Laws 1987, LB 398, § 47; Laws 2005, LB 238, § 15.

Cross References

Risk management pool, defined, see section 44-4303.

48-179 Review procedure; where held; joint stipulation of dismissal.

Either party at interest who refuses to accept the final findings, order, award, or judgment of the Nebraska Workers' Compensation Court on the original hearing may, within fourteen days after the date thereof, file with the compensation court an application for review before the compensation court, plainly stating the errors on which such party relies for reversal or modification and a brief statement of the relief sought. Such application must be specific as to each finding of fact and conclusion of law urged as error and the reason therefor. General allegations shall not be accepted. The filing of an application for review shall vest in an appellee the right to cross appeal against any other party to the appeal. If appellee files a brief pursuant to rules of practice prescribed by the compensation court, the cross appeal need only be asserted in the appellee's brief. The party or parties appealing for review or cross appealing shall be bound by the allegations of error contained in the application or brief and will be deemed to have waived all others. The compensation court may, at its option, notice a plain error not assigned in an application for review or brief. No party may file a motion for new trial, a motion for reconsideration, or a petition for rehearing before the judge at the original hearing. A party filing an application for review shall at the same time file with the compensation court copies of such application for the other party or parties at interest. The compensation court shall then immediately serve upon such other party or parties by mail or otherwise, as elsewhere herein provided, a copy of such application for review, and shall proceed to hear the cause on the record of the original hearing. The review by the compensation court shall be held in Lancaster County, Nebraska, or in any other county in the state at the discretion of the compensation court. Within fourteen days after such review the compensation court shall make its findings, order, award, or judgment, determining the issues in such cause. Upon the joint stipulation of the parties to dismiss, the compensation court may dismiss such an application without a review. No new evidence may be introduced at such review hearing. The review panel may write an opinion, but need not do so, and may make its decision by a brief summary order. The compensation court may reverse or modify the findings, order, award, or judgment of the original hearing only on the grounds that the judge was clearly wrong on the evidence or the decision was contrary to law. On review, the compensation court may affirm, modify, reverse, or remand the judgment on the original hearing.

Source: Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-179; Laws 1949, c. 161, § 6, p. 413; Laws 1971, LB 251, § 1; Laws 1972, LB 1491, § 1; Laws 1983, LB 18, § 7; Laws 1986, LB 811, § 112; Laws 1992, LB 360, § 21; Laws 2000, LB 1221, § 14; Laws 2005, LB 236, § 1.

48-188 Order, award, or judgment; filed with district court; filing fee; effect.

Any order, award, or judgment by the Nebraska Workers' Compensation Court, or any judge thereof, which is certified by the clerk of the compensation court or any order, award, or judgment made pursuant to the Nebraska Workers' Compensation Act by the Court of Appeals or Supreme Court which is certified by the Clerk of the Supreme Court may, as soon as the same becomes conclusive upon the parties at interest, be filed with the district court of any county or counties in the State of Nebraska upon the payment of a fee of two dollars to the clerk of the district court or courts where such order, award, or judgment is filed. Upon filing, such order, award, or judgment shall have the same force and effect as a judgment of such district court or courts and all proceedings in relation thereto shall thereafter be the same as though the order, award, or judgment had been rendered in a suit duly heard and determined by such district court or courts.

Source: Laws 1935, c. 57, § 16, p. 196; C.S.Supp.,1941, § 48-177; R.S. 1943, § 48-188; Laws 1951, c. 153, § 2, p. 623; Laws 1975, LB 187, § 16; Laws 1986, LB 811, § 118; Laws 1991, LB 732, § 113; Laws 2005, LB 13, § 30.

PART V—CLAIMS AGAINST THE STATE

48-1,102 Award or judgment; payment; procedure.

Any final, nonappealable award or judgment in favor of a claimant under sections 48-192 to 48-1,109 shall be certified by the Attorney General to the Risk Manager and to the Director of Administrative Services. The Director of Administrative Services shall promptly issue his or her warrant for payment of such award or judgment out of the Workers' Compensation Claims Revolving Fund, if sufficient money is available in such fund, except that no portion in excess of one hundred thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. Notice of any portion of an award or judgment in excess of one hundred thousand dollars shall be delivered by the Risk Manager to the chairperson of the Business and Labor Committee of the Legislature at the next regular session of the Legislature convening after the date the award or judgment becomes final and nonappealable. Delivery of any warrant in satisfaction of an award or judgment shall be made only upon receipt of a written receipt by the claimant in a form provided by the Attorney General.

Source: Laws 1971, LB 390, § 11; Laws 1986, LB 811, § 129; Laws 1994, LB 1211, § 2; Laws 2005, LB 13, § 31.

PART VI—NAME OF ACT AND APPLICABILITY OF CHANGES

48-1,110 Act, how cited.

Sections 48-101 to 48-1,117 shall be known and may be cited as the Nebraska Workers' Compensation Act.

Source: Laws 1986, LB 811, § 136; Laws 1986, LB 1036, § 2; Laws 1990, LB 313, § 4; Laws 1992, LB 360, § 26; Laws 1993, LB 757, § 30; Laws 1997, LB 128, § 7; Laws 1997, LB 474, § 7; Laws 2005, LB 13, § 32; Laws 2007, LB588, § 5; Laws 2010, LB780, § 3.
Effective date July 15, 2010.

48-1,111 Laws 2010, LB780, changes; applicability.

The changes made by Laws 2010, LB780 to the Nebraska Workers' Compensation Act apply only to personal injuries that occurred on or after July 15, 2010, and before June 30, 2014.

Source: Laws 2010, LB780, § 4.
Effective date July 15, 2010.

PART VII—COMPENSATION COURT CASH FUND

48-1,116 Compensation Court Cash Fund; created; use; investment.

The Compensation Court Cash Fund is hereby created. The fund shall be used to aid in providing for the expense of administering the Nebraska Workers' Compensation Act and the payment of the salaries and expenses of the personnel of the Nebraska Workers' Compensation Court, except that transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011.

All fees received pursuant to sections 48-120, 48-120.02, 48-138, 48-139, 48-145.04, and 48-165 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund. The fund shall also consist of amounts credited to the fund pursuant to sections 48-1,113, 48-1,114, and 77-912. The State Treasurer may receive and credit to the fund any money which may at any time be contributed to the state or the fund by the federal government or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise by reason of any payment made from the fund.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1993, LB 757, § 22; Laws 1994, LB 1066, § 35; Laws 2002, LB 1310, § 5; Laws 2005, LB 13, § 33; Laws 2009, First Spec. Sess., LB3, § 24.
Effective date November 21, 2009.

Cross References

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

48-1,117 Compensation Court Cash Fund; accounting; abatement of contributions.

The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Compensation Court Cash Fund setting forth the balance in the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance in the fund on hand as of the last day of the preceding month.

At the close of business on June 30 of any year, if the balance in the fund is equal to or exceeds three times the sum expended and encumbered in the fiscal year then ending, the contributions to the fund pursuant to sections 48-1,113 and 48-1,114 shall abate for the calendar year next ensuing and only for that year and the compensation court shall notify all self-insurers and the Director of Insurance who shall notify all workers' compensation insurers and risk

management pools of such abatement and of the date when such contributions shall resume. No abatement shall ever extend beyond one year.

Source: Laws 1993, LB 757, § 23; Laws 2005, LB 238, § 16.

ARTICLE 2
GENERAL PROVISIONS

Section
48-225. Veterans preference; terms, defined.
48-227. Veterans preference; examinations.
48-229. Veterans preference; Commissioner of Labor; duties.
48-237. Employer; prohibited use of social security numbers; exceptions; violations; penalty; conviction; how treated.

48-225 Veterans preference; terms, defined.

As used in sections 48-225 to 48-231, unless the context otherwise requires:

(1) Veteran means any person who served full-time duty with military pay and allowances in the armed forces of the United States, except for training or for determining physical fitness, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions);

(2) Full-time duty means duty during time of war or during a period recognized by the United States Department of Veterans Affairs as qualifying for veterans benefits administered by the department and that such duty from January 31, 1955, to February 28, 1961, exceeded one hundred eighty days unless lesser duty was the result of a service-connected or service-aggravated disability;

(3) Disabled veteran means an individual who has served on active duty in the armed forces of the United States, has been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) therefrom, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the United States Department of Veterans Affairs or a military department; and

(4) Preference eligible means any veteran as defined in this section.

Source: Laws 1969, c. 751, § 1, p. 2826; Laws 1991, LB 2, § 6; Laws 2001, LB 368, § 1; Laws 2005, LB 54, § 7.

48-227 Veterans preference; examinations.

Veterans who obtain passing scores on all parts or phases of an examination shall have five percent added to their passing score if a claim for such preference is made on the application. An additional five percent shall be added to the passing score of any disabled veteran.

Source: Laws 1969, c. 751, § 3, p. 2827; Laws 1997, LB 5, § 2; Laws 2005, LB 54, § 8.

48-229 Veterans preference; Commissioner of Labor; duties.

It shall be the duty of the Commissioner of Labor to enforce the provisions of sections 48-225 to 48-231. The commissioner shall act on preference claims as follows:

(1) When the employing agency and the claimant are in disagreement or when there is doubt as to any preference claim, the commissioner shall adjudicate the claim based on information given in the claim, the documents supporting the claim, and information which may be received from the armed forces of the United States, the United States Department of Veterans Affairs, or the National Archives and Records Administration;

(2) The commissioner shall allow a tentative five-percent preference, pending receipt of additional information, to any person who claims either a five-percent or a ten-percent preference but who furnishes insufficient information to establish entitlement thereto at the time of examination; and

(3) The commissioner shall decide appeals from preference determinations made by any employing agency.

Source: Laws 1969, c. 751, § 5, p. 2827; Laws 1991, LB 2, § 7; Laws 2005, LB 54, § 9.

48-237 Employer; prohibited use of social security numbers; exceptions; violations; penalty; conviction; how treated.

(1) For purposes of this section:

(a) Employer means a person which employs any individual within this state as an employee;

(b) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (i) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (ii) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (iii) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(c) Person means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof;

(d) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm; and

(e) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(2) Except as otherwise provided in subsection (3) of this section, an employer shall not:

(a) Publicly post or publicly display in any manner more than the last four digits of an employee's social security number, including intentional communication of more than the last four digits of the social security number or

otherwise making more than the last four digits of the social security number available to the general public or to an employee's coworkers;

(b) Require an employee to transmit more than the last four digits of his or her social security number over the Internet unless the connection is secure or the information is encrypted;

(c) Require an employee to use more than the last four digits of his or her social security number to access an Internet web site unless a password, unique personal identification number, or other authentication device is also required to access the Internet web site; or

(d) Require an employee to use more than the last four digits of his or her social security number as an employee number for any type of employment-related activity.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, an employer shall be permitted to use more than the last four digits of an employee's social security number only for:

(i) Compliance with state or federal laws, rules, or regulations;

(ii) Internal administrative purposes, including provision of more than the last four digits of social security numbers to third parties for such purposes as administration of personnel benefit provisions for the employer and employment screening and staffing; and

(iii) Commercial transactions freely and voluntarily entered into by the employee with the employer for the purchase of goods or services.

(b) The following uses for internal administrative purposes described in subdivision (a)(ii) of this subsection shall not be permitted:

(i) As an identification number for occupational licensing;

(ii) As an identification number for drug-testing purposes except when required by state or federal law;

(iii) As an identification number for company meetings;

(iv) In files with unrestricted access within the company;

(v) In files accessible by any temporary employee unless the temporary employee is bonded or insured under a blanket corporate surety bond or equivalent commercial insurance; or

(vi) For posting any type of company information.

(4) An employer who violates this section is guilty of a Class V misdemeanor.

(5) Evidence of a conviction under this section is admissible in evidence at a civil trial as evidence of the employer's negligence.

Source: Laws 2007, LB674, § 16.

ARTICLE 3

CHILD LABOR

Section
48-310. Children under sixteen; working hours; limit; posting of notice; fee; special permit; exceptions.

48-310 Children under sixteen; working hours; limit; posting of notice; fee; special permit; exceptions.

(1) No person under sixteen years of age shall be employed or permitted to work in any employment as defined in section 48-301 more than forty-eight

hours in any one week, nor more than eight hours in any one day, nor before the hour of 6 in the morning, nor after the hour of 8 in the evening if the child is under the age of fourteen, nor after the hour of 10 in the evening if such child is between the ages of fourteen and sixteen. The person issuing the work certificate may limit or extend the stated hour in individual cases by endorsement on the certificate, except a child shall only be permitted to work after the hour of 10 p.m. if there is no school scheduled for the following day and, if he or she is between fourteen and sixteen years of age, he or she has consented to such extension by signing his or her name on the endorsement extension, and his or her employer has obtained a special permit from the Department of Labor. The Department of Labor may issue a special permit to allow employment of such child beyond 10 p.m. upon being satisfied, after inspection of the working conditions, of the safety, healthfulness, and general welfare to the child of the business premises. The special permit may be issued for periods not to exceed ninety days and may be renewed only after reinspection. The fee for each permit or renewal shall be established by rule and regulation of the Commissioner of Labor, and all money so collected by the commissioner shall be remitted to the State Treasurer who shall credit the funds to the General Fund. Every employer shall post in a conspicuous place in every room where such children are employed a printed notice stating the hours required of them each day, the hours of commencing and stopping work, and the time allowed for meals. The printed form of such notice shall be furnished by the Department of Labor.

(2) Except as provided in subsections (3) and (4) of this section, no person under sixteen years of age shall be employed or permitted to work as a door-to-door solicitor.

(3) A person under sixteen years of age engaged in the delivery or distribution of newspapers or shopping news may be employed or permitted to work as a door-to-door solicitor of existing customers of such newspapers or shopping news.

(4) A person under sixteen years of age is permitted to work as a door-to-door solicitor if he or she is working on behalf of his or her own individual entrepreneurial endeavor.

Source: Laws 1907, c. 66, § 10, p. 266; R.S.1913, § 3584; Laws 1919, c. 190, tit. IV, art. III, § 10, p. 556; C.S.1922, § 7678; C.S.1929, § 48-310; R.S.1943, § 48-310; Laws 1963, c. 290, § 3, p. 869; Laws 1967, c. 296, § 6, p. 808; Laws 1969, c. 399, § 1, p. 1389; Laws 1995, LB 330, § 3; Laws 2005, LB 484, § 1.

ARTICLE 4

HEALTH AND SAFETY REGULATIONS

Section
48-418. Transferred to section 48-2512.01.
48-418.01. Repealed. Laws 2007, LB 265, § 38.
48-418.02. Repealed. Laws 2007, LB 265, § 38.
48-418.03. Repealed. Laws 2007, LB 265, § 38.
48-418.04. Repealed. Laws 2007, LB 265, § 38.
48-418.05. Repealed. Laws 2007, LB 265, § 38.
48-418.06. Repealed. Laws 2007, LB 265, § 38.
48-418.07. Repealed. Laws 2007, LB 265, § 38.
48-418.08. Repealed. Laws 2007, LB 265, § 38.

48-418 Transferred to section 48-2512.01.

48-418.01 Repealed. Laws 2007, LB 265, § 38.

48-418.02 Repealed. Laws 2007, LB 265, § 38.

48-418.03 Repealed. Laws 2007, LB 265, § 38.

48-418.04 Repealed. Laws 2007, LB 265, § 38.

48-418.05 Repealed. Laws 2007, LB 265, § 38.

48-418.06 Repealed. Laws 2007, LB 265, § 38.

48-418.07 Repealed. Laws 2007, LB 265, § 38.

48-418.08 Repealed. Laws 2007, LB 265, § 38.

48-418.09 Repealed. Laws 2007, LB 265, § 38.

48-418.10 Repealed. Laws 2007, LB 265, § 38.

48-418.11 Repealed. Laws 2007, LB 265, § 38.

48-418.12 Repealed. Laws 2007, LB 265, § 38.

48-418.14 Repealed. Laws 2007, LB 265, § 38.

48-443 Safety committee; when required; membership; employee rights and remedies.

(1)(a) Not later than January 1, 1994, every public and private employer subject to the Nebraska Workers' Compensation Act shall establish a safety committee. Such committee shall adopt and maintain an effective written injury prevention program.

(b) A client of a professional employer organization is not relieved of its obligation to establish a safety committee based on its workers being co-employees of the professional employer organization. A professional employer agreement shall not allocate the client's responsibility to establish a safety committee to the professional employer organization. For purposes of this subdivision, the terms client, professional employer organization, and professional employer agreement shall have the same meaning as in section 48-2702. This subdivision becomes operative on January 1, 2012.

(2)(a) For employers subject to collective-bargaining agreements, the establishment of the safety committee shall be accomplished through the collective-bargaining process.

(b) For employers not subject to collective-bargaining agreements, the safety committee shall be composed of an equal number of members representing employees and the employer. Employee members shall not be selected by the employer but shall be selected pursuant to procedures prescribed in rules and regulations adopted and promulgated by the Commissioner of Labor.

(c) The cost of maintaining and operating the safety committee shall be minimal to the employer.

(3) An employer shall compensate employee members of the safety committee at their regular hourly wage plus their regular benefits while the employees are attending committee meetings or otherwise engaged in committee duties.

(4) An employee shall not be discharged or discriminated against by his or her employer because he or she makes any oral or written complaint to the safety committee or any governmental agency having regulatory responsibility for occupational safety and health, and any employee so discharged or discriminated against shall be reinstated and shall receive reimbursement for lost wages and work benefits caused by the employer's action.

Source: Laws 1993, LB 757, § 32; Laws 2010, LB579, § 19.
Operative date July 15, 2010.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-446 Workplace Safety Consultation Program; created; inspections and consultations; elimination of hazards; fees; Workplace Safety Consultation Program Cash Fund; created; use; investment; records; violation; penalty; Department of Labor; powers and duties; liability.

(1) There is hereby created the Workplace Safety Consultation Program. It is the intent of the Legislature that such program help provide employees in Nebraska with safe and healthful workplaces.

(2) Under the Workplace Safety Consultation Program, the Department of Labor may conduct workplace inspections and consultations to determine whether employers are complying with standards issued by the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for safe and healthful workplaces. Workplace inspections and safety consultations shall be performed by employees of the Department of Labor who are knowledgeable and experienced in the occupational safety and health field and who are trained in the federal standards and in the recognition of safety and health hazards. The Department of Labor may employ qualified persons as may be necessary to carry out this section.

(3) All employers shall be subject to occupational safety and health inspections covering their Nebraska operations. Employers shall be selected by the Commissioner of Labor for inspection on the basis of factors intended to identify the likelihood of workplace injuries and to achieve the most efficient utilization of safety personnel of the Department of Labor. Such factors shall include:

(a) The amount of premium paid by the employer for workers' compensation insurance;

(b) The experience modification produced by the experience rating system referenced in section 44-7524;

(c) Whether the employer is covered by workers' compensation insurance under section 44-3,158;

(d) The relative hazard of the employer's type of business as evidenced by insurance rates or loss costs filed with the Director of Insurance for the insurance rating classification or classifications applicable to the employer;

(e) The nature, type, or frequency of accidents for the employer as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(f) Workplace hazards as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(g) Previous safety and health history;

(h) Possible employee exposure to toxic substances;

(i) Requests by employers for the Department of Labor to inspect their workplaces or otherwise provide consulting services on a basis by which the employer will reimburse the Department of Labor; and

(j) All other relevant factors.

(4) Hazards identified by an inspection shall be eliminated within a reasonable time as specified by the Commissioner of Labor.

(5) An employer who refuses to eliminate workplace hazards in compliance with an inspection shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for enforcement.

(6) At the discretion of the Commissioner of Labor, inspection of an employer may be repeated to ensure compliance by the employer, with the expenses incurred by the Department of Labor to be paid by the employer.

(7) The Commissioner of Labor shall adopt and promulgate rules and regulations establishing a schedule of fees for consultations and inspections. Such fees shall be established with due regard for the costs of administering the Workplace Safety Consultation Program. The cost of consultations and inspections shall be borne by each employer for which these services are rendered.

(8) There is hereby created the Workplace Safety Consultation Program Cash Fund. All fees collected pursuant to the Workplace Safety Consultation Program shall be remitted to the State Treasurer for credit to the fund and shall be used for the sole purpose of administering the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9) Each employer provided a consultation or inspection by the Department of Labor shall retain up-to-date records for each place of employment as recommended by the inspection or consultation. The employer shall make such records available to the Department of Labor upon request to ensure continued progress of the employer's efforts to comply with the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration standards.

(10) Any person who knowingly operates or causes to be operated a business in violation of recommendations to correct serious or imminent hazards as

identified by the Workplace Safety Consultation Program shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration.

(11) The Attorney General, acting on behalf of the Commissioner of Labor, or the county attorney in a county in which a business is located or operated may apply to the district court for an order against any employer in violation of this section.

(12) The Workplace Safety Consultation Program shall not be construed to alter the duty of care or the liability of an owner or a business for injuries or death of any person or damage to any property. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving a business by reason of administration of the Workplace Safety Consultation Program.

(13) Inspectors employed by the Department of Labor may inspect any place of employment with or without notice during normal hours of operation. Such inspectors may suspend the operation of equipment determined to constitute an imminent danger situation. Operation of such equipment shall not resume until the hazardous or unsafe condition is corrected to the satisfaction of the inspector.

(14) No person with a reasonable cause to believe the truth of the information shall be subject to civil liability for libel, slander, or any other relevant tort cause of action by virtue of providing information without malice on workplace hazards or the nature, type, or frequency of accidents to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor.

(15) Safety and health inspectors employed by the Department of Labor shall have the right and power to enter any premise, building, or structure, public or private, for the purpose of inspecting any work area or equipment. A refusal by the employer of entry by a safety and health inspector employed by the Department of Labor shall be a violation of this subsection. If the Commissioner of Labor finds, after notice and hearing, that an employer has violated this subsection, he or she may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

(16) The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1993, LB 757, § 36; Laws 1994, LB 1066, § 37; Laws 2000, LB 1119, § 41; Laws 2001, LB 180, § 6; Laws 2007, LB117, § 34.

Cross References

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

ARTICLE 6
EMPLOYMENT SECURITY

Section
48-601. Act, how cited.
48-602. Terms, defined.
48-603.01. Indian tribes; applicability of Employment Security Law.
48-606. Commissioner; duties; powers; annual report; schedule of fees.

Section
48-610. Repealed. Laws 2009, LB 631, § 15.
48-612. Employers; records and reports required; privileged communications; violation; penalty.
48-612.01. Employer information; disclosure authorized; costs; prohibited redisclosure; penalty.
48-619. Unemployment Trust Fund; withdrawals.
48-622.01. State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.
48-622.02. Nebraska Training and Support Trust Fund; created; investment; use; Administrative Costs Reserve Account; created; use.
48-622.03. Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.
48-624. Benefits; weekly benefit amount; calculation.
48-625. Benefits; weekly payment; how computed.
48-627. Benefits; eligibility conditions; availability for work; requirements.
48-628. Benefits; conditions disqualifying applicant; exceptions.
48-628.01. Good cause for voluntarily leaving employment, defined.
48-628.02. Extended benefits; terms, defined; weekly extended benefit amount; payment of emergency unemployment compensation.
48-628.03. Extended benefits; eligibility; seek or accept suitable work; suitable work, defined.
48-628.05. Additional unemployment benefits; conditions; amount; when benefits payable.
48-647. Benefits; assignments void; exemption from legal process; exception; child support obligations; Supplemental Nutrition Assistance Program benefits overissuance; disclosure required; collection.
48-648. Combined tax; employer; payment; rules and regulations governing; related corporations or limited liability companies; professional employer organization.
48-648.01. Employer; submit quarterly wage reports; when.
48-648.02. Wages, defined.
48-649. Combined tax rate; how computed.
48-649.01. Repealed. Laws 2007, LB 265, § 39.
48-652. Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement.
48-654. Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.
48-654.01. Employer's experience account; transferable; when; violation; penalty.
48-655. Combined taxes; payments in lieu of contributions; collections; setoffs; interest; actions; offset against federal income tax refund; procedure.
48-663.01. Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; levy authorized; procedure; failure or refusal to honor levy; liability.
48-664. Benefits; false statements by employer; penalty; failure or refusal to make combined tax payment.
48-665. Benefits; erroneous payments; recovery; offset against federal income tax refund; procedure.
48-668. Unemployment compensation; services performed in another state; arrangements with other states.
48-668.02. Unemployment compensation; services performed in another state; reimbursements to and from other states.
48-669. Claimant; benefit amounts; how computed.

48-601 Act, how cited.

Sections 48-601 to 48-671 shall be known and may be cited as the Employment Security Law.

Source: Laws 1937, c. 108, § 1, p. 370; Laws 1941, c. 94, § 14, p. 401; C.S.Supp.,1941, § 48-701; R.S.1943, § 48-601; Laws 1949, c.

163, § 1, p. 417; Laws 1953, c. 167, § 1, p. 520; Laws 1981, LB 470, § 1; Laws 1985, LB 339, § 1; Laws 1985, LB 343, § 1; Laws 1994, LB 1337, § 1; Laws 1996, LB 1072, § 1; Laws 2001, LB 192, § 1; Laws 2005, LB 484, § 2; Laws 2005, LB 739, § 1; Laws 2007, LB265, § 3; Laws 2010, LB1020, § 1.
Operative date July 1, 2011.

48-602 Terms, defined.

For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Base period means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that for benefit years beginning on or after July 1, 2011, if the individual is not monetarily eligible for unemployment benefits as determined pursuant to subdivision (5) of section 48-627 based upon wages paid during the first four of the five most recently completed calendar quarters, the department shall make a redetermination of monetary eligibility based upon an alternative base period which consists of the last four completed calendar quarters immediately preceding the first day of the claimant's benefit year;

(2) Benefits means the money payments payable to an individual with respect to his or her unemployment;

(3) Benefit year, with respect to any individual, means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

(4) Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(5) Client means any individual, partnership, limited liability company, corporation, or other legally recognized entity that contracts with a professional employer organization to obtain professional employer services relating to worksite employees through a professional employer agreement;

(6) Combined tax means the employer liability consisting of contributions and the state unemployment insurance tax;

(7) Combined tax rate means the rate which is applied to wages to determine the combined taxes due;

(8) Commissioner means the Commissioner of Labor;

(9) Contribution rate means the percentage of the combined tax rate used to determine the contribution portion of the combined tax;

(10) Contributions means that portion of the combined tax based upon the contribution rate portion of the combined tax rate which is deposited in the

state Unemployment Compensation Fund as required by sections 48-648 and 48-649;

(11) Department means the Department of Labor;

(12) Employment office means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

(13) Fund means the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;

(14) Hospital means an institution which has been licensed, certified, or approved by the Department of Health and Human Services as a hospital;

(15) Institution of higher education means an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's degree or higher or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subdivision, all colleges and universities in this state are institutions of higher education for purposes of this section;

(16) Insured work means employment for employers;

(17) Leave of absence means any absence from work: (a) Mutually and voluntarily agreed to by the employer and the employee; (b) mutually and voluntarily agreed to between the employer and the employee's bargaining agent; or (c) to which the employee is entitled to as a matter of state or federal law;

(18) Paid vacation leave means a period of time while employed or following separation from employment in which the individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage;

(19) Payments in lieu of contributions means the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

(20) Professional employer agreement means a written professional employer services contract whereby:

(a) A professional employer organization agrees to provide payroll services, employee benefit administration, or personnel services for a majority of the employees providing services to the client at a client worksite;

(b) The agreement is intended to be ongoing rather than temporary in nature; and

(c) Employer responsibilities for worksite employees, including those of hiring, firing, and disciplining, are shared between the professional employer organization and the client by contract. The term professional employer agreement shall not include a contract between a parent corporation, company, or other entity and a wholly owned subsidiary;

(21) Professional employer organization means any individual, partnership, limited liability company, corporation, or other legally recognized entity that enters into a professional employer agreement with a client or clients for a majority of a client's workforce at a client worksite. The term professional employer organization does not include an insurer as defined in section 44-103 or a temporary help firm;

(22) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(23) State unemployment insurance tax means that portion of the combined tax which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649;

(24) State unemployment insurance tax rate means the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(25) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm;

(26) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(27) Unemployed means an individual during any week in which the individual performs no service and with respect to which no wages are payable to the individual or any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount, but does not include any individual on a leave of absence or on paid vacation leave. When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in this section in the week or weeks the vacation is actually taken;

(28) Unemployment Trust Fund means the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on March 2, 2001, which receives credit from the state Unemployment Compensation Fund;

(29) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, means all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. After December 31, 1985, wages includes tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604, wages means cash remuneration and the cash value of commodities not intended for personal consumption by the worker and his or her immediate family for such services. With respect to services performed in employment in domestic service as is provided in subdivision (4)(d) of section 48-604, wages means cash remuneration for such services.

The term wages does not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code as defined in section 49-801.01;

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) Any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01 which is exempt from tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code as defined in section 49-801.01;

(e) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) under a simplified employee pension as defined by the commissioner, (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, or (v) under a cafeteria benefits plan;

(f) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on March 2, 2001, and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on March 2, 2001; and

(h) Remuneration for service performed in the employ of any state in the exercise of his or her duties as a member of the Army National Guard or Air National Guard or in the employ of the United States of America as a member of any military reserve unit;

(30) Week means such period of seven consecutive days as the commissioner may by rule and regulation prescribe;

(31) Week of unemployment with respect to any individual means any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount;

(32) Wholly owned subsidiary means a corporation, company, or other entity which has eighty percent or more of its outstanding voting stock or membership owned or controlled, directly or indirectly, by the parent entity; and

(33)(a) Until January 1, 2012, worksite employee means a person receiving wages or benefits from a professional employer organization pursuant to the terms of a professional employer agreement for work performed at a client's worksite.

(b) On and after January 1, 2012, worksite employee has the same meaning as the term covered employee in section 48-2702.

Source: Laws 1937, c. 108, § 2, p. 370; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 373; C.S.Supp.,1941, § 48-702; Laws 1943, c. 111, §§ 1, 2, p. 390; R.S.1943, § 48-602; Laws 1947, c. 175, § 1, p. 563; Laws 1949, c. 163, § 2, p. 417; Laws 1951, c. 156, § 1, p. 626; Laws 1953, c. 167, § 2, p. 520; Laws 1961, c. 235, § 3, p. 695; Laws 1961, c. 238, § 1, p. 701; Laws 1971, LB 651, § 1; Laws 1972, LB 1392, § 1; Laws 1977, LB 509, § 1; Laws 1979, LB 581, § 1; Laws 1980, LB 800, § 1; Laws 1983, LB 248, § 1; Laws 1985, LB 339, § 2; Laws 1986, LB 950, § 1; Laws 1988, LB 1033, § 1; Laws 1992, LB 879, § 1; Laws 1993, LB 121, § 289; Laws 1994, LB 286, § 1; Laws 1994, LB 1337, § 2; Laws 1995, LB 77, § 1; Laws 1995, LB 574, § 51; Laws 1996, LB 1044, § 274; Laws 1999, LB 168, § 1; Laws 1999, LB 608, § 1; Laws 2001, LB 192, § 3; Laws 2002, LB 921, § 1; Laws 2005, LB 484, § 3; Laws 2005, LB 739, § 2; Laws 2007, LB265, § 4; Laws 2007, LB296, § 216; Laws 2010, LB579, § 20; Laws 2010, LB1020, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB579, section 20, with LB1020, section 2, to reflect all amendments.

Note: Changes made by LB579 became operative July 15, 2010. Changes made by LB1020 became operative July 1, 2011.

48-603.01 Indian tribes; applicability of Employment Security Law.

(1) For purposes of the Employment Security Law, unless the context otherwise requires, the term employer shall include any Indian tribe for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed.

(2) The term employment shall include service performed in the employ of an Indian tribe, as defined in 26 U.S.C. 3306(u), as such section existed on March 2, 2001, if such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of 26 U.S.C. 3306(c)(7), as such section existed on March 2, 2001, and is not otherwise excluded from employment under the Employment Security Law. For purposes of this section, the exclusions from employment in subdivisions (6)(f) and (6)(g) of section 48-604 shall be applicable to services performed in the employment of an Indian tribe.

(3) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered employment under the Employment Security Law. Subdivision (8) of section 48-628 shall apply to services performed in an educational institution or educational service agency owned or operated by an Indian tribe.

(4)(a) Indian tribes or tribal units, subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to the Employment Security Law, shall pay combined tax under the same terms and conditions as all other subject employers, unless they elect to make payments in lieu of contributions equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(b) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in subdivision (7) of section 48-649 pertaining to state and local governments subject to the Employment Security Law. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(c) Except as provided in subsection (7) of this section, Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(d) At the discretion of the commissioner, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election to:

(i) Execute and file with the commissioner a surety bond approved by the commissioner; or

(ii) Deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(5)(a)(i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection (4) of this section, for the following tax year unless payment in full is received before combined tax rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision (5)(a)(i) of this section, shall have such option reinstated if, after a period of one year, all combined taxes have been paid timely and no combined tax, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(b)(i) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted will cause services performed for such tribe to not be treated as employment for purposes of subsection (2) of this section.

(ii) The commissioner may determine that any Indian tribe that loses coverage under subdivision (5)(b)(i) of this section may have services performed for such tribe again included as employment for purposes of subsection (2) of this section if all contributions, payments in lieu of contributions, penalties, and interest have been paid.

(6) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed timeframe:

(a) Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act, as the act existed on March 2, 2001;

(b) Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(c) Could cause the Indian tribe to be excepted from the definition of employer, as provided in subsection (1) of this section, and services in the employ of the Indian tribe, as provided in subsection (2) of this section, to be excepted from employment.

(7) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

(8) If an Indian tribe fails to make payments required under this section, including assessments of interest and penalty, within ninety days after a final notice of delinquency, the commissioner shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

Source: Laws 2001, LB 192, § 2; Laws 2003, LB 199, § 1; Laws 2005, LB 739, § 4.

48-606 Commissioner; duties; powers; annual report; schedule of fees.

(1) It shall be the duty of the Commissioner of Labor to administer the Employment Security Law. He or she shall have the power and authority to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable to that end if the same are consistent with the Employment Security Law. The commissioner shall determine his or her own organization and methods of procedure in accordance with such law and shall have an official seal which shall be judicially noticed. Not later than the thirty-first day of December of each year, the commissioner shall submit to the Governor a report covering the administration and operation of such law during the preceding fiscal year and shall make such recommendations for amendments to such law as he or she deems proper. Such report shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.

Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he or she shall promptly inform the Governor and the Clerk of the Legislature thereof and make recommendations with respect thereto. Each member of the Legislature shall receive a copy of such information by making a request for it to the commissioner.

(2) The commissioner may establish a schedule of fees to recover the cost of services including, but not limited to, copying, preparation of forms and other materials, responding to inquiries for information, payments for returned check charges and electronic payments not accepted, and furnishing publications prepared by the commissioner pursuant to the Employment Security Law. Fees received pursuant to this subsection shall be deposited in the Employment Security Administration Fund.

(3) Nothing in this section shall be construed to allow the department to charge any fee for making a claim for unemployment benefits or receiving assistance from the state employment service established pursuant to section 48-662 when performing functions within the purview of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as amended.

Source: Laws 1937, c. 108, § 11, p. 390; Laws 1941, c. 94, § 8, p. 396; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-606; Laws 1953, c. 167, § 4(1), p. 529; Laws 1955, c. 231, § 8, p. 720; Laws 1979, LB 322, § 17; Laws 1985, LB 339, § 6; Laws 1987, LB 278, § 1; Laws 2003, LB 195, § 1; Laws 2007, LB265, § 5.

48-610 Repealed. Laws 2009, LB 631, § 15.

48-612 Employers; records and reports required; privileged communications; violation; penalty.

(1) Each employer, whether or not subject to the Employment Security Law, shall keep true and accurate work records containing such information as the Commissioner of Labor may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner and the appeal tribunal may require from any such employer any sworn or unsworn reports, with respect to persons employed by it, which he, she, or it deems necessary for the effective administration of such law. Except as otherwise provided in section 48-612.01, information thus obtained or obtained from any individual pursuant to the administration of such law shall be held confidential.

(2) Any employee of the commissioner who violates any provision of sections 48-606 to 48-616 shall be guilty of a Class III misdemeanor.

(3) All letters, reports, communications, or any other matters, either oral or written, from an employer or his or her workers to each other or to the commissioner or any of his or her agents, representatives, or employees which shall have been written or made in connection with the requirements and administration of the Employment Security Law, or the rules and regulations thereunder, shall be absolutely privileged and shall not be made the subject

matter or basis for any suit for slander or libel in any court of this state, unless the same be false in fact and malicious in intent.

Source: Laws 1937, c. 108, § 11, p. 392; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-612; Laws 1945, c. 115, § 2, p. 381; Laws 1977, LB 40, § 290; Laws 1985, LB 339, § 11; Laws 1993, LB 757, § 31; Laws 2001, LB 192, § 5; Laws 2007, LB265, § 6.

48-612.01 Employer information; disclosure authorized; costs; prohibited redisclosure; penalty.

(1) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) Any claimant or employer or representative of a claimant or employer, as a party before an appeal tribunal or court regarding an unemployment claim or tax appeal, shall be supplied with information obtained in the administration of the Employment Security Law, to the extent necessary for the proper presentation of the claim or appeal;

(b) The names, addresses, and identification numbers of employers may be disclosed to the Nebraska Workers' Compensation Court which may use such information for purposes of enforcement of the Nebraska Workers' Compensation Act;

(c) Appeal tribunal decisions rendered pursuant to the Employment Security Law and designated as precedential decisions by the commissioner on the coverage of employers, employment, wages, and benefit eligibility may be published in printed or electronic format if all social security numbers have been removed and such disclosure is otherwise consistent with federal and state law;

(d) To a public official for use in the performance of his or her official duties. For purposes of this subdivision, performance of official duties means the administration or enforcement of law or the execution of the official responsibilities of a federal, state, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public office or to a political party;

(e) To an agent or contractor of a public official to whom disclosure is permissible under subdivision (d) of this subsection;

(f) For use in reports and publications containing information collected exclusively for statistical purposes under a cooperative agreement with the federal Bureau of Labor Statistics. This subdivision does not restrict or impose any condition on the transfer of any other information to the federal Bureau of Labor Statistics under an agreement or the federal Bureau of Labor Statistics' disclosure or use of such information; and

(g) In response to a court order.

(2) Information about an individual or employer obtained pursuant to subsection (1) of section 48-612 may be disclosed to:

(a) One who acts as an agent for the individual or employer when the agent presents a written release from the individual or employer, where practicable, or other evidence of authority to act on behalf of the individual or employer;

(b) An elected official who is performing constituent services if the official presents reasonable evidence that the individual or employer has authorized such disclosure;

(c) An attorney who presents written evidence that he or she is representing the individual or employer in a matter arising under the Employment Security Law; or

(d) A third party or its agent carrying out the administration or evaluation of a public program, if that third party or agent obtains a written release from the individual or employer to whom the information pertains. To constitute informed consent, the release shall be signed and shall include a statement:

(i) Specifically identifying the information that is to be disclosed;

(ii) That state government files will be accessed to obtain that information;

(iii) Identifying the specific purpose or purposes for which the information is sought and that information obtained under the release will only be used for that purpose or purposes; and

(iv) Identifying and describing all the parties who may receive the information disclosed.

(3) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) To an individual or employer if the information requested pertains only to the individual or employer making the request;

(b) To a local, state, or federal governmental official, other than a clerk of court, attorney, or notary public acting on behalf of a litigant, with authority to obtain such information by subpoena under state or federal law; and

(c) To a federal official for purposes of unemployment compensation program oversight and audits, including disclosures under 20 C.F.R. part 601 and 29 C.F.R. parts 96 and 97 as they existed on January 1, 2007.

(4) If the purpose for which information is provided under subsection (1), (2), or (3) of this section is not related to the administration of the Employment Security Law or the unemployment insurance compensation program of another jurisdiction, the commissioner shall recover the costs of providing such information from the requesting individual or entity prior to providing the information to such individual or entity unless the costs are nominal or the entity is a governmental agency which the commissioner has determined provides reciprocal services.

(5) Any person who receives information under subsection (1) or (2) of this section and rediscloses such information for any purpose other than the purpose for which it was originally obtained shall be guilty of a Class III misdemeanor.

Source: Laws 2007, LB265, § 7; Laws 2009, LB631, § 1.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-619 Unemployment Trust Fund; withdrawals.

Money shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits in accordance with lawful rules and regulations prescribed by the Commissioner of Labor, except that subject to the limitations therein contained, money credited to this fund pursuant to

section 903 of the federal Social Security Act, as amended, may upon an appropriation duly made by the Legislature, be used for the administration of the Employment Security Law and shall for such purposes and to the extent required be transferred to the Employment Security Administration Fund established in subdivision (1)(a) of section 48-621. The commissioner shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to this state's account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such money in the benefit account and shall issue his or her warrants as aforesaid and as provided by law for the payment of benefits solely from such benefit account. Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations. Any balance of money requisitioned from the Unemployment Trust Fund, which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods or, in the discretion of the commissioner, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the Unemployment Trust Fund, as provided in section 48-618. As used in this section, the term warrant shall include a signature negotiable instrument, electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the treasurer. The warrant, when it is a dual signature negotiable instrument, shall affect the state's cash balance in the bank when redeemed by the treasurer, not when cashed by a financial institution.

Source: Laws 1937, c. 108, § 9, p. 388; Laws 1939, c. 56, § 7, p. 244; C.S.Supp.,1941, § 48-709; R.S.1943, § 48-619; Laws 1957, c. 208, § 2, p. 728; Laws 1985, LB 339, § 16; Laws 1995, LB 1, § 4; Laws 2000, LB 953, § 5; Laws 2005, LB 484, § 4.

48-622.01 State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.

(1) There is hereby created in the state treasury a special fund to be known as the State Unemployment Insurance Trust Fund. All state unemployment insurance tax collected under sections 48-648 to 48-661, less refunds, shall be paid into the fund. Such money shall be held in trust for the sole and exclusive use of payment of unemployment insurance benefits. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that interest earned on money in the fund shall be credited to the Nebraska Training and Support Trust Fund at the end of each calendar quarter.

(2) The commissioner shall have authority to determine when and in what amounts withdrawals from the State Unemployment Insurance Trust Fund for payment of benefits are necessary. Amounts withdrawn for payment of benefits shall be immediately forwarded to the Secretary of the Treasury of the United States of America to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administra-

tion, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) If and when the state unemployment insurance tax ceases to exist as determined by the Governor, all money then in the State Unemployment Insurance Trust Fund less accrued interest shall be immediately transferred to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. The determination to eliminate the state unemployment insurance tax shall be based on the solvency of the state's account in the Unemployment Trust Fund and the need for training of Nebraska workers. Accrued interest in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

Source: Laws 1994, LB 1337, § 4; Laws 1995, LB 7, § 48; Laws 2009, LB631, § 2.

Cross References

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

48-622.02 Nebraska Training and Support Trust Fund; created; investment; use; Administrative Costs Reserve Account; created; use.

(1) There is hereby created in the state treasury a special fund to be known as the Nebraska Training and Support Trust 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. All money deposited or paid into the fund is hereby appropriated and made available to the commissioner. No expenditures shall be made from the fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

(2) Money in the Nebraska Training and Support Trust Fund shall be used for (a) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (b) administrative costs of creating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund, (c) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers, (d) recruitment of workers to Nebraska, (e) training new employees of expanding Nebraska businesses, (f) the costs of creating a common web portal for the attraction of businesses and workers to Nebraska, and (g) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require.

(3) There is hereby created within the Nebraska Training and Support Trust Fund a separate account to be known as the Administrative Costs Reserve Account. Money shall be allocated from the Nebraska Training and Support Trust Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivisions (2)(a) through (g) of this section. The administrative costs determined to be applicable to creation and operation of the State Unemployment Insurance Trust Fund

and the Nebraska Training and Support Trust Fund shall be paid out of the Administrative Costs Reserve Account.

Source: Laws 1994, LB 1337, § 5; Laws 1995, LB 7, § 49; Laws 2009, LB631, § 3.

Cross References

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

48-622.03 Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.

(1) There is hereby created as of January 1, 1996, the Nebraska Worker Training Board consisting of seven members appointed and serving for terms determined by the Governor as follows:

(a) A representative of employers in Nebraska;

(b) A representative of employees in Nebraska;

(c) A representative of the public;

(d) The Commissioner of Labor or a designee;

(e) The Director of Economic Development or a designee;

(f) The Commissioner of Education or a designee; and

(g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) Beginning July 1, 1996, and annually thereafter, the Governor shall appoint a chairperson for the board. The chairperson shall be either the representative of the employers, the representative of the employees, or the representative of the public.

(3) Beginning July 1, 1996, and annually thereafter the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Trust Fund. The guidelines shall include, but not be limited to, guidelines for certifying training providers, criteria for evaluating requests for the use of money under section 48-622.02, and guidelines for requiring employers to provide matching funds. The guidelines shall give priority to training that contributes to the expansion of the Nebraska workforce and increasing the pool of highly skilled workers in Nebraska.

(4) Beginning September 1, 1997, and annually thereafter, the board shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Trust Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

Source: Laws 1994, LB 1337, § 6; Laws 2009, LB631, § 4.

48-624 Benefits; weekly benefit amount; calculation.

(1) For any benefit year beginning on or after January 1, 2001, through December 31, 2005, an individual's weekly benefit amount shall be one-half his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(2) For any benefit year beginning on or after January 1, 2006, through December 31, 2007, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed two hundred eighty-eight dollars per week.

(3) For any benefit year beginning on or after January 1, 2008, through December 31, 2010, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed the lesser of one-half of the state average weekly wage as annually determined under section 48-121.02 or the previous year's maximum weekly benefit amount plus ten dollars per week.

(4) For any benefit year beginning on or after January 1, 2011, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(5) For purposes of this section, an individual's average weekly wage shall equal the wages paid for insured work in the highest quarter of the base period divided by thirteen.

Source: Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 233; Laws 1941, c. 94, § 2, p. 381; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-624; Laws 1945, c. 114, § 2, p. 371; Laws 1949, c. 163, § 1, p. 423; Laws 1951, c. 157, § 1, p. 630; Laws 1953, c. 168, § 1, p. 541; Laws 1955, c. 190, § 5, p. 542; Laws 1957, c. 209, § 1, p. 738; Laws 1959, c. 229, § 1, p. 802; Laws 1963, c. 291, § 1, p. 870; Laws 1965, c. 286, § 1, p. 819; Laws 1967, c. 299, § 1, p. 814; Laws 1969, c. 401, § 1, p. 1394; Laws 1971, LB 651, § 4; Laws 1972, LB 1391, § 1; Laws 1973, LB 333, § 1; Laws 1974, LB 775, § 1; Laws 1975, LB 475, § 1; Laws 1977, LB 337, § 1; Laws 1979, LB 183, § 1; Laws 1983, LB 524, § 1; Laws 1985, LB 216, § 1; Laws 1987, LB 446, § 1; Laws 1990, LB 315, § 1; Laws 1994, LB 286, § 2; Laws 1998, LB 225, § 1; Laws 2005, LB 739, § 5; Laws 2007, LB265, § 8.

48-625 Benefits; weekly payment; how computed.

(1) For benefit years beginning on or before September 30, 2006, each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-half of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-half of such benefit amount but less than his or her full weekly benefit amount, he or she shall be paid an amount equal to one-half of such benefit amount. For any benefit year beginning on or after October 1, 2006, each individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-fourth of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-fourth of such benefit amount, he or she shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with

respect to that week in excess of one-fourth of the individual's weekly benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages pursuant to this subsection or as a result of the application of subdivision (5) of section 48-628, the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.

Any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

No deduction shall be made for any supplemental payments received by a claimant under the provisions of subsection (b) of section 408 of Title IV of the Veterans Readjustment Assistance Act of 1952.

The percentage of benefits and the percentage of extended benefits which are federally funded may be adjusted in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177.

(2) Vacation leave pay including that received in a lump sum or upon separation from employment shall be prorated in an amount reasonably attributable to each week claimed and considered payable with respect to such week.

Source: Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 234; Laws 1941, c. 94, § 2, p. 382; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-625; Laws 1949, c. 163, § 8, p. 424; Laws 1953, c. 167, § 5, p. 531; Laws 1980, LB 800, § 2; Laws 1982, LB 801, § 1; Laws 1983, LB 248, § 3; Laws 1986, LB 950, § 2; Laws 1987, LB 461, § 1; Laws 1995, LB 1, § 6; Laws 1999, LB 608, § 3; Laws 2005, LB 739, § 8.

48-627 Benefits; eligibility conditions; availability for work; requirements.

An unemployed individual shall be eligible to receive benefits with respect to any week, only if the Commissioner of Labor finds:

(1) He or she has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules and regulations as the commissioner may prescribe, except that the commissioner may, by rule and regulation, waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations, with respect to which he or she finds that compliance with such requirements, would be oppressive, or would be inconsistent with the purposes of the Employment Security Law, except that no such rule or regulation shall conflict with section 48-623;

(2) He or she has made a claim for benefits, in accordance with section 48-629;

(3) He or she is able to work and is available for work. No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because he or she is on vacation without pay during such week, if such vacation is not the result of his or her own action as distinguished from any collective action by a collective-bargaining agent or other action beyond his or her individual control, and regardless of whether he or she has not been notified of the vacation at the time of his or her hiring. An individual who is otherwise eligible shall not be deemed unavailable for work or failing to engage in an active work search solely because such individual is seeking part-time work if the majority

of the weeks of work in an individual's base period include part-time work. For purposes of this subdivision, seeking only part-time work shall mean seeking less than full-time work having comparable hours to the individual's part-time work in the base period, except that the individual must be available for work at least twenty hours per week. Receipt of a non-service-connected total disability pension by a veteran at the age of sixty-five or more shall not of itself bar the veteran from benefits as not able to work. An otherwise eligible individual while engaged in a training course approved for him or her by the commissioner shall be considered available for work for the purposes of this section. An inmate in a penal or custodial institution shall be considered unavailable for work for purposes of this section;

(4) He or she has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purpose of this subdivision (a) unless it occurs within the benefit year, which includes the week with respect to which he or she claims payment of benefits, (b) if benefits have been paid with respect thereto, or (c) unless the individual was eligible for benefits with respect thereto, as provided in sections 48-627 and 48-628, except for the requirements of this subdivision and of subdivision (6) of section 48-628;

(5)(a) For any benefit year beginning on or after January 1, 2006, he or she has, within his or her base period, been paid a total sum of wages for employment by employers equal to not less than two thousand five hundred dollars, of which sum at least eight hundred dollars has been paid in each of two quarters in his or her base period, and subsequent to filing the claim which establishes the previous benefit year, the individual has earned wages in insured work of at least six times his or her weekly benefit amount for the previous benefit year.

(b) For any benefit year beginning on or after July 1, 2011, he or she has (i) within his or her base period, been paid a total sum of wages for employment by employers equal to not less than three thousand seven hundred seventy dollars, of which sum at least one thousand eight hundred fifty dollars has been paid in one quarter in his or her base period and eight hundred dollars has been paid in a second quarter of his or her base period, and (ii) subsequent to filing the claim which establishes the previous benefit year, earned wages in insured work of at least six times his or her weekly benefit amount for the previous benefit year. Commencing January 1, 2012, and each January 1 thereafter, the amount which an individual is required to earn within his or her base period shall be adjusted annually. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the one-year period ending on the previous September 30.

(c) For the purposes of this subdivision (5), (i) for the determination of monetary eligibility, wages paid within a base period shall not include wages from any calendar quarter previously used to establish a valid claim for benefits, (ii) wages shall be counted as wages for insured work for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer, by whom such wages were paid, has satisfied the conditions of section 48-603 or subsection (3) of section 48-661, with respect to becoming an employer, and (iii) with respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work for benefit purposes with respect to any benefit year shall include wages

paid for services as defined by subdivision (4)(a), (b), (c), or (d) of section 48-604 to the extent that such services were not services in employment under subdivision (4)(a) of section 48-604 or section 48-661 immediately prior to September 2, 1977, even though the employer by whom such wages were paid had not satisfied the conditions of subdivision (8), (9), (10), or (11) of section 48-603 with respect to becoming an employer at the time such wages were paid except to the extent that assistance under Title II of the federal Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services; and

(6) He or she is participating in reemployment services at no cost to such individual as directed by the commissioner, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by rule and regulation of the commissioner which is in compliance with section 303(j)(1) of the federal Social Security Act, unless the commissioner determines that: (a) The individual has completed such services; or (b) there is justifiable cause for the claimant's failure to participate in such services.

Source: Laws 1937, c. 108, § 4, p. 376; Laws 1939, c. 56, § 3, p. 235; Laws 1941, c. 94, § 3, p. 383; C.S.Supp.,1941, § 48-704; R.S. 1943, § 48-627; Laws 1945, c. 115, § 3, p. 382; Laws 1949, c. 163, § 10, p. 425; Laws 1953, c. 167, § 6, p. 531; Laws 1955, c. 190, § 6, p. 543; Laws 1957, c. 209, § 2, p. 739; Laws 1959, c. 230, § 1, p. 804; Laws 1961, c. 241, § 1, p. 717; Laws 1963, c. 291, § 3, p. 872; Laws 1963, c. 292, § 1, p. 875; Laws 1971, LB 651, § 5; Laws 1973, LB 372, § 1; Laws 1977, LB 509, § 4; Laws 1981, LB 470, § 2; Laws 1985, LB 339, § 21; Laws 1987, LB 469, § 1; Laws 1987, LB 446, § 2; Laws 1988, LB 1033, § 2; Laws 1995, LB 1, § 8; Laws 1995, LB 240, § 1; Laws 1998, LB 225, § 2; Laws 2005, LB 484, § 5; Laws 2005, LB 739, § 9; Laws 2010, LB1020, § 3.
Operative date July 1, 2011.

48-628 Benefits; conditions disqualifying applicant; exceptions.

An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has left work voluntarily without good cause, if so found by the commissioner, and for the thirteen weeks which immediately follow such week. A temporary employee of a temporary help firm has left work voluntarily without good cause if the temporary employee does not contact the temporary help firm for reassignment upon completion of an assignment and the temporary employee has been advised by the temporary help firm of his or her obligation to contact the temporary help firm upon completion of assignments and has been advised by the temporary help firm that the temporary employee may be denied benefits for failure to do so; or

(b) For the week in which he or she has left work voluntarily for the sole purpose of accepting previously secured, permanent, full-time, insured work, which he or she does accept, which offers a reasonable expectation of betterment of wages or working conditions, or both, and for which he or she earns wages payable to him or her, if so found by the commissioner, and for the two weeks which immediately follow such week;

(2) For the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for the fourteen weeks which immediately follow such week. If the commissioner finds that such individual's misconduct was gross, flagrant, and willful, or was unlawful, the commissioner shall totally disqualify such individual from receiving benefits with respect to wage credits earned prior to discharge for such misconduct. In addition to the fourteen-week benefit disqualification assessed under this subdivision, the commissioner shall cancel all wage credits earned as a result of employment with the discharging employer if the commissioner finds that the individual was discharged for misconduct in connection with the work which was not gross, flagrant, and willful or unlawful but which included being under the influence of any intoxicating beverage or being under the influence of any controlled substance listed in section 28-405 not prescribed by a physician licensed to practice medicine or surgery when the individual is so under the influence on the worksite or while engaged in work for the employer;

(3)(a) For any week of unemployment in which he or she has failed, without good cause, to apply for available, suitable work when so directed by the employment office or the commissioner, to accept suitable work offered him or her, or to return to his or her customary self-employment, if any, and the commissioner so finds, and for the twelve weeks which immediately follow such week, and his or her total benefit amount to which he or she is then entitled shall be reduced by an amount equal to the number of weeks for which he or she has been disqualified by the commissioner.

(b) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to the individual's health, safety, and morals, his or her physical fitness and prior training, his or her experience and prior earnings, his or her length of unemployment and prospects for securing local work in his or her customary occupation, and the distance of the available work from his or her residence.

(c) Notwithstanding any other provisions of the Employment Security Law, no work shall be deemed suitable and benefits shall not be denied under such law to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or (iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) Notwithstanding any other provisions in subdivision (3) of this section, no otherwise eligible individual shall be denied benefits with respect to any week in which he or she is in training with the approval of the commissioner, by reason of the application of the provisions in subdivision (3) of this section relating to failure to apply for or a refusal to accept suitable work.

(e) No individual shall be disqualified for refusing to apply for available, full-time work or accept full-time work under subdivision (3)(a) of this section solely because such individual is seeking part-time work if the majority of the weeks of work in an individual's base period include part-time work. For purposes of this subdivision, seeking only part-time work shall mean seeking less than full-time work having comparable hours to the individual's part-time

work in the base period, except that the individual must be available for work at least twenty hours per week;

(4) For any week with respect to which the commissioner finds that his or her total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed, except that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that (a) the individual is not participating in, financing, or directly interested in the labor dispute which caused the stoppage of work and (b) he or she does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating, financing, or directly interested in the dispute. If in any case, separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other premises;

(5) For any week with respect to which he or she is receiving or has received remuneration in the form of (a) wages in lieu of notice, or a dismissal or separation allowance, (b) compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States, (c) retirement or retired pay, pension, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer, or (d) a gratuity or bonus from an employer, paid after termination of employment, on account of prior length of service, or disability not compensated under the workers' compensation law. Such payments made in lump sums shall be prorated in an amount which is reasonably attributable to such week. If the prorated remuneration is less than the benefits which would otherwise be due, he or she shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. The prorated remuneration shall be considered wages for the quarter to which it is attributable. Military service-connected disability compensation payable under 38 U.S.C. chapter 11 and primary insurance benefits payable under Title II of the Social Security Act, as amended, or similar payments under any act of Congress shall not be deemed to be disqualifying or deductible from the benefit amount. No deduction shall be made for the part of any retirement pension which represents return of payments made by the individual. In the case of a transfer by an individual or his or her employer of an amount from one retirement plan to a second qualified retirement plan under the Internal Revenue Code, the amount transferred shall not be deemed to be received by the claimant until actually paid from the second retirement plan to the claimant. No deduction shall be made for any benefit received under a supplemental unemployment benefit plan described in subdivision (29)(g) of section 48-602;

(6) For any week with respect to which or a part of which he or she has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or of the United States finally determines that he or she is not entitled to such unemployment benefits, this disqualification shall not apply;

(7) For any week of unemployment if such individual is a student. For the purpose of this subdivision, student shall mean an individual registered for full attendance at and regularly attending an established school, college, or university, unless the major portion of his or her wages for insured work during his or her base period was for services performed while attending school, except that attendance for training purposes under a plan approved by the commissioner for such individual shall not be disqualifying;

(8) For any week of unemployment if benefits claimed are based on services performed:

(a) In an instructional, research, or principal administrative capacity for an educational institution, if such week commences during the period between two successive academic years or terms, or when an agreement provides instead for a similar period between two regular, but not successive, terms during such period, if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) In any other capacity for an educational institution, if such week commences during a period between two successive academic years or terms, if such individual performs such services in the first of such academic years or terms, and if there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual for any week under subdivision (8)(b) of this section and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of subdivision (8)(b) of this section;

(c) In any capacity described in subdivision (8)(a) or (b) of this section if such week commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

(d) In any capacity described in subdivision (8)(a) or (b) of this section in an educational institution while in the employ of an educational service agency, and such individual shall be disqualified as specified in subdivisions (8)(a), (b), and (c) of this section. As used in this subdivision, educational service agency shall mean a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions; and

(e) In any capacity described in subdivision (8)(a) or (b) of this section in an educational institution if such services are provided to or on behalf of the educational institution while in the employ of an organization or entity described in section 3306(c)(7) or 3306(c)(8) of the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7) or (8), and such individual shall be disqualified as specified in subdivisions (8)(a), (b), and (c) of this section;

(9) For any week of unemployment benefits if substantially all the services upon which such benefits are based consist of participating in sports or athletic events or training or preparing to so participate, if such week of unemployment

begins during the period between two successive sport seasons or similar periods, if such individual performed such services in the first of such seasons or similar periods, and if there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods;

(10) For any week of unemployment benefits if the services upon which such benefits are based are performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence;

(11) Notwithstanding any other provisions of the Employment Security Law, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1), nor shall such individual be denied benefits by reason of leaving work to enter such training, if the work left is not suitable employment, or because of the application to any such week in training of provisions of the Employment Security Law, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, suitable employment shall mean, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for purposes of such act;

(12) For any week during which the individual is on a leave of absence; and

(13) For any week of unemployment benefits or for waiting week credit if he or she has been disqualified from the receipt of benefits pursuant to section 48-663.01 two or more times in the five-year period immediately prior to filing his or her most recent claim. This subdivision shall not apply if the individual has repaid in full any overpayments established in conjunction with the disqualifications assessed under section 48-663.01 during that five-year period.

Source: Laws 1937, c. 108, § 5, p. 377; Laws 1939, c. 56, § 4, p. 236; C.S.Supp.,1941, § 48-705; R.S.1943, § 48-628; Laws 1945, c. 114, § 4, p. 372; Laws 1955, c. 190, § 7, p. 545; Laws 1961, c. 241, § 2, p. 718; Laws 1965, c. 287, § 1, p. 821; Laws 1967, c. 301, § 1, p. 818; Laws 1969, c. 402, § 1, p. 1395; Laws 1971, LB 651, § 6; Laws 1975, LB 370, § 1; Laws 1976, LB 819, § 1; Laws 1977, LB 509, § 5; Laws 1978, LB 128, § 1; Laws 1979, LB 581, § 3; Laws 1980, LB 800, § 4; Laws 1981, LB 470, § 3; Laws 1982, LB 801, § 2; Laws 1983, LB 248, § 4; Laws 1983, LB 432, § 1; Laws 1984, LB 746, § 2; Laws 1985, LB 339, § 22; Laws 1985, LB 341, § 1; Laws 1987, LB 276, § 1; Laws 1987, LB 469,

§ 2; Laws 1989, LB 605, § 1; Laws 1991, LB 498, § 1; Laws 1992, LB 878, § 1; Laws 1994, LB 286, § 3; Laws 1994, LB 913, § 1; Laws 1995, LB 1, § 9; Laws 1995, LB 77, § 2; Laws 1995, LB 291, § 1; Laws 1995, LB 759, § 1; Laws 1996, LB 633, § 1; Laws 1998, LB 225, § 3; Laws 2000, LB 953, § 7; Laws 2001, LB 192, § 8; Laws 2002, LB 921, § 2; Laws 2005, LB 484, § 6; Laws 2005, LB 739, § 10; Laws 2010, LB1020, § 4.
Operative date July 1, 2011.

48-628.01 Good cause for voluntarily leaving employment, defined.

Good cause for voluntarily leaving employment shall include, but not be limited to, the following reasons:

(1) An individual has made all reasonable efforts to preserve the employment but voluntarily leaves his or her work for the necessary purpose of escaping abuse at the place of employment or abuse as defined in section 42-903 between household members;

(2) An individual left his or her employment voluntarily due to a bona fide non-work-connected illness or injury that prevented him or her from continuing the employment or from continuing the employment without undue risk of harm to the individual;

(3) An individual left his or her employment to accompany his or her spouse to the spouse's employment in a different city or new military duty station;

(4) An individual left his or her employment because his or her employer required the employee to relocate;

(5)(a) An individual is a construction worker and left his or her employment voluntarily for the purpose of accepting previously secured insured work in the construction industry if the commissioner finds that:

(i)(A) The quit occurred within thirty days immediately prior to the established termination date of the job which the individual voluntarily leaves, (B) the specific starting date of the new job is prior to the established termination date of the job which the worker quits, (C) the new job offered employment for a longer period of time than remained available on the job which the construction worker voluntarily quit, and (D) the worker had worked at least twenty days or more at the new job after the established termination date of the previous job unless the new job was terminated by a contract cancellation; or

(ii)(A) The construction worksite of the job which the worker quit was more than fifty miles from his or her place of residence, (B) the new construction job was fifty or more miles closer to his or her residence than the job which he or she quit, and (C) the worker actually worked twenty days or more at the new job unless the new job was terminated by a contract cancellation.

(b) The provisions of this subdivision (5) shall not apply if the individual is separated from the new job under conditions resulting in a disqualification from benefits under subdivision (1) or (2) of section 48-628;

(6) An individual accepted a voluntary layoff to avoid bumping another worker;

(7) An individual left his or her employment as a result of being directed to perform an illegal act;

(8) An individual left his or her employment because of unlawful discrimination or workplace harassment on the basis of race, sex, or age;

(9) An individual left his or her employment because of unsafe working conditions; or

(10) Equity and good conscience demand a finding of good cause.

Source: Laws 2005, LB 739, § 7.

48-628.02 Extended benefits; terms, defined; weekly extended benefit amount; payment of emergency unemployment compensation.

(1) As used in the Employment Security Law, unless the context otherwise requires:

(a) Extended benefit period means a period which begins with the third week after a week for which there is a state ''on'' indicator and ends with either of the following weeks, whichever occurs later: (i) The third week after the first week for which there is a state ''off'' indicator or (ii) the thirteenth consecutive week of such period, except that no extended benefit period may begin by reason of a state ''on'' indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state;

(b) Extended benefits means benefits, including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85, payable to an individual for weeks of unemployment in his or her eligibility period;

(c) Eligibility period of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Notwithstanding any other provision of the Employment Security Law, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual's weekly benefit amount for extended benefits;

(d) Exhaustee means an individual who, with respect to any week of unemployment in his or her eligibility period:

(i)(A) Has received, prior to such week, all of the regular benefits that were available to him or her under the Employment Security Law of this state or under the unemployment insurance law of any other state, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen or ex-servicewomen under 5 U.S.C. chapter 85, in his or her current benefit year that includes such week, except for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits that were available to him or her although as a result of a pending appeal with respect to wages or employment or both wages and employment that were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits; or (B) his or her benefit year having expired prior to such week, has no, or insufficient, wages or employment or both wages and employ-

ment on the basis of which he or she could establish a new benefit year that would include such week;

(ii) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(iii) Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is considered an exhaustee;

(e) Rate of insured unemployment means the percentage, used by the commissioner in determining whether there is a state ''on'' or state ''off'' indicator, derived by dividing (i) the average weekly number of individuals filing claims for regular compensation under the Employment Security Law for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his or her reports to the United States Secretary of Labor, by (ii) the average monthly employment covered under the Employment Security Law for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(f) Regular benefits means benefits payable to an individual under the Employment Security Law of this state or under the unemployment insurance law of any other state, including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85, other than extended benefits;

(g) State ''off'' indicator means a week that the commissioner determines that, for the period consisting of such week and the immediately preceding twelve weeks, neither subdivision (1)(h)(i) or (1)(h)(ii) of this section was satisfied; and

(h) State ''on'' indicator means a week that the commissioner determines that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under the Employment Security Law: (i) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent or (ii) equaled or exceeded six percent.

(2) Except when the result would be inconsistent with the other provisions of this section, as provided in the rules and regulations of the commissioner, the provisions of the Employment Security Law which apply to claims for or payment of regular benefits shall apply to claims for and payment of extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds that with respect to such week: (a) Such individual is an exhaustee; (b) such individual has satisfied the requirements of the Employment Security Law for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; (c) sections 48-628.03 and 48-628.04 do not apply; and (d) such individual has been paid wages for insured work during the individual's base period equal to at least one and one-half times the wages paid

in that calendar quarter of the individual's base period in which such wages were highest.

(3) The weekly extended benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to the weekly benefit amount payable to him or her during his or her applicable benefit year. The total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts: Fifty percent of the total amount of regular benefits which were payable to him or her under the Employment Security Law in his or her applicable benefit year; or thirteen times his or her weekly benefit amount which was payable to him or her under the Employment Security Law for a week of total unemployment in the applicable benefit year.

(4) Whenever an extended benefit period is to become effective in this state as a result of a state ''on'' indicator or an extended benefit period is to be terminated in this state as a result of a state ''off'' indicator, the commissioner shall make an appropriate public announcement. Computations required to determine the rate of insured unemployment shall be made by the commissioner in accordance with regulations prescribed by the United States Secretary of Labor. Any amount of extended benefits payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

(5) Notwithstanding any other provision of the Employment Security Law, during an extended benefit period, the Governor may provide for the payment of emergency unemployment compensation pursuant to Public Law 110-252, as amended, or any substantially similar federal unemployment compensation paid entirely from federal funds to individuals prior to the payment of extended benefits pursuant to sections 48-628.02 to 48-628.04.

Source: Laws 1971, LB 651, § 7; Laws 1972, LB 1392, § 5; Laws 1977, LB 509, § 6; Laws 1979, LB 581, § 4; Laws 1981, LB 470, § 4; Laws 1982, LB 801, § 3; Laws 1984, LB 746, § 3; Laws 1985, LB 339, § 23; Laws 2010, LB1055, § 1.
Effective date July 15, 2010.

48-628.03 Extended benefits; eligibility; seek or accept suitable work; suitable work, defined.

(1) An individual shall be ineligible for payment of extended benefits for any week of unemployment in his or her eligibility period if the commissioner finds that during such period (a) he or she failed to accept any offer of suitable work or failed to apply for any suitable work to which he or she was referred by the commissioner or (b) he or she failed to actively engage in seeking work as prescribed under subsection (5) of this section.

(2) Any individual who has been found ineligible for extended benefits by reason of subsection (1) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he or she (a) has been employed in each of four subsequent weeks, whether or not consecutive, and (b) has earned remuneration equal to not less than four times the extended weekly benefit amount.

(3) For purposes of this section, the term suitable work shall mean, with respect to any individual, any work which is within such individual's capabilities and for which the gross average weekly remuneration payable for the work

exceeds the sum of the individual's average weekly benefit amount payable to him or her during his or her applicable benefit year, plus the amount, if any, of supplemental unemployment compensation benefits as defined in section 501(c)(17)(D) of the Internal Revenue Code payable to such individual for such week. Such work must also pay wages equal to the higher of the federal minimum wage or the applicable state or local minimum wage. No individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability contained in this subsection if (a) the position was not offered to such individual in writing or was not listed with the employment service, (b) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subdivision (3) of section 48-628, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection, or (c) the individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in subdivision (3) of section 48-628 without regard to the definition specified by this subsection.

(4) Notwithstanding the provisions of subsection (3) of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth under subdivision (3)(c) of section 48-628, nor shall an individual be denied benefits if such benefits would be deniable by reason of the provision set forth in subdivision (3)(d) of section 48-628.

(5) For the purposes of subsection (1) of this section, an individual shall be treated as actively engaged in seeking work during any week if the individual has engaged in a systematic and sustained effort to obtain work during such week and the individual furnishes tangible evidence that he or she has engaged in such effort during such week.

(6) The state employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in subsection (3) of this section.

(7) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if such individual has been disqualified for benefits under subdivision (1), (2), or (3) of section 48-628 unless such individual has earned wages for services performed in subsequent employment in an amount not less than four hundred dollars.

Source: Laws 1981, LB 470, § 5; Laws 1982, LB 801, § 4; Laws 1993, LB 47, § 1; Laws 1995, LB 1, § 10; Laws 1995, LB 574, § 53; Laws 2000, LB 953, § 8; Laws 2010, LB1055, § 2.
Effective date July 15, 2010.

48-628.05 Additional unemployment benefits; conditions; amount; when benefits payable.

(1) In addition to any other unemployment benefits to which an individual is entitled under the Employment Security Law, an individual who has exhausted all regular unemployment benefits for which he or she has been determined

eligible shall continue to be eligible for up to twenty-six additional weeks of unemployment benefits if such individual:

(a)(i) Was involuntarily separated from employment as a result of a permanent reduction of operations at the individual's place of employment or (ii) is unemployed as the result of a separation from a declining occupation;

(b) Is enrolled and making satisfactory progress in a (i) training program approved for him or her by the commissioner or (ii) job training program authorized under the federal Workforce Investment Act of 1998, as amended;

(c) Is receiving training which is preparing the individual for entry into a high-demand occupation;

(d) Is enrolled in training no later than the end of the benefit year established with respect to the separation that makes the individual eligible for the training benefit. Individuals shall be notified of the enrollment requirement at the time of their initial determination of eligibility for regular benefits; and

(e) Is not receiving similar stipends or other training allowances for nontraining costs. Similar stipend means an amount provided under a program with similar aims, such as providing training to increase employability, and in approximately the same amounts.

(2) The amount of unemployment benefits payable to an individual for a week of unemployment under this section shall be equal to the amount of unemployment benefits which he or she has been determined eligible for under section 48-624 less any deductions or offsets authorized under the Employment Security Law.

(3) If an individual begins to receive unemployment benefits under this section while enrolled in a training program described in subsection (1) of this section during a benefit year, such individual shall continue to receive such benefits so long as he or she continues to make satisfactory progress in such training program, except that such benefits shall not exceed twenty-six times the individual's weekly benefit amount for the most recent benefit year as determined under section 48-624.

(4) No benefits shall be payable under this section until the individual has exhausted all (a) regular unemployment benefits, (b) extended benefits as defined in subdivision (1)(b) of section 48-628.02, and (c) unemployment benefits paid entirely from federal funds to which he or she is entitled, including, but not limited to, trade readjustment assistance, emergency unemployment compensation, or other similar federally funded unemployment benefits.

(5) For purposes of this section, regular unemployment benefits means all unemployment benefits for which an individual is eligible payable under sections 48-624 to 48-626, extended unemployment benefits payable under section 48-628.02, and any unemployment benefits funded solely by the federal government.

Source: Laws 2010, LB1020, § 5.
Operative date July 1, 2011.

48-647 Benefits; assignments void; exemption from legal process; exception; child support obligations; Supplemental Nutrition Assistance Program benefits overissuance; disclosure required; collection.

(1) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 48-623 to 48-626 shall be void except as set forth in this section. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his or her spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. Any assignment, pledge, or encumbrance of any right or claim to contributions or to any money credited to any employer's reserve account in the Unemployment Compensation Fund shall be void, and the same shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and any waiver of any exemption provided for in this section shall be void.

(2)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes child support obligations as defined under subdivision (h) of this subsection. If such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the Department of Health and Human Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation otherwise payable to an individual disclosing child support obligations:

(i) The amount specified by the individual to the commissioner to be deducted under this subsection, if neither subdivision (ii) nor (iii) of this subdivision is applicable;

(ii) The amount, if any, determined pursuant to an agreement between the Department of Health and Human Services and such individual owing the child support obligations to have a specified amount withheld and such agreement being submitted to the commissioner, unless subdivision (iii) of this subdivision is applicable; or

(iii) The amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in subdivision (2)(i) of this section, properly served upon the commissioner.

(c) Any amount deducted and withheld under subdivision (b) of this subsection shall be paid by the commissioner to the Department of Health and Human Services.

(d) Any amount deducted and withheld under subdivision (b) or (g) of this subsection shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the Department of Health and Human Services in satisfaction of his or her child support obligations.

(e) For purposes of subdivisions (a) through (d) and (g) of this subsection, the term unemployment compensation shall mean any compensation payable under the Employment Security Law and including amounts payable by the commissioner pursuant to an agreement by any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection shall apply only if appropriate arrangements have been made for reimbursement by the Department of Health and Human Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the department.

(g) The Department of Health and Human Services and the commissioner shall develop and implement a collection system to carry out the intent of this subdivision. The collection system shall, at a minimum, provide that:

(i) The commissioner shall periodically notify the Department of Health and Human Services of the information listed in section 43-1719 with respect to individuals determined to be eligible for unemployment compensation during such period;

(ii) Unless the county attorney, the authorized attorney, or the Department of Health and Human Services has sent a notice on the same support order under section 43-1720, upon the notification required by subdivision (2)(g)(i) of this section, the Department of Health and Human Services shall send notice to any such individual who owes child support obligations and who is subject to income withholding pursuant to subdivision (2)(a), (2)(b)(ii), or (2)(b)(iii) of section 43-1718.01. The notice shall be sent by certified mail to the last-known address of the individual and shall state the same information as required under section 43-1720;

(iii)(A) If the support obligation is not based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the Department of Health and Human Services shall hold a hearing within fifteen days of the date of receipt of the request. The hearing shall be in accordance with the Administrative Procedure Act. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the individual and the commissioner of its decision within fifteen days of the date the hearing is held; and

(B) If the support obligation is based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the county attorney or authorized attorney shall apply the procedures described in sections 43-1732 to 43-1742;

(iv)(A) If no hearing is requested by the individual under this subsection or pursuant to a notice sent under section 43-1720, (B) if after a hearing under this subsection or section 43-1721 the Department of Health and Human Services determines that the assignment should go into effect, (C) in cases in which the court has ordered income withholding for child support pursuant to subsection (1) of section 43-1718.01, or (D) in cases in which the court has ordered income withholding for child support pursuant to section 43-1718.02 and the case subsequently becomes one in which child support collection services are being provided under Title IV-D of the federal Social Security Act, as amended, the Department of Health and Human Services shall certify to the commissioner the amount to be withheld for child support obligations from the individual's unemployment compensation. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child support when added to the amount withheld to pay current support shall not exceed such maximum amount;

(v) The collection system shall comply with the requirements of Title III and Title IV-D of the federal Social Security Act, as amended;

(vi) The collection system shall be in addition to and not in substitution for or derogation of any other available remedy; and

(vii) The Department of Health and Human Services and the commissioner shall adopt and promulgate rules and regulations to carry out subdivision (2)(g) of this section.

(h) For purposes of this subsection, the term child support obligations shall include only obligations which are being enforced pursuant to a plan described in section 454 of the federal Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the federal Social Security Act.

(i) For purposes of this subsection, the term legal process shall mean any writ, order, summons, or other similar process in the nature of garnishment, which:

(i) Is issued by a court of competent jurisdiction of any state, territory, or possession of the United States or an authorized official pursuant to order of such a court of competent jurisdiction or pursuant to state law. For purposes of this subdivision, the chief executive officer of the Department of Health and Human Services shall be deemed an authorized official pursuant to order of a court of competent jurisdiction or pursuant to state law; and

(ii) Is directed to, and the purpose of which is to compel, the commissioner to make a payment for unemployment compensation otherwise payable to an individual in order to satisfy a legal obligation of such individual to provide child support.

(j) Nothing in this subsection shall be construed to authorize withholding from unemployment compensation of any support obligation other than child support obligations.

(3)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes an uncollected overissuance, as defined in 7 U.S.C. 2022(c)(1) as such section existed on January 1, 2009, of Supplemental Nutrition Assistance Program benefits, if not otherwise known or disclosed to the state Supplemental Nutrition Assistance Program agency. The commissioner shall notify the state Supplemental Nutrition Assistance Program agency enforcing such obligation of any individual disclosing that he or she owes an uncollected overissuance whom the commissioner determines is eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance (i) the amount specified by the individual to the commissioner to be deducted and withheld under this subsection, (ii) the amount, if any, determined pursuant to an agreement submitted to the state Supplemental Nutrition Assistance Program agency under 7 U.S.C. 2022(c)(3)(A) as such section existed on January 1, 2009, or (iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to 7 U.S.C. 2022(c)(3)(B) as such section existed on January 1, 2009.

(c) Any amount deducted and withheld under this subsection shall be paid by the commissioner to the state Supplemental Nutrition Assistance Program agency.

(d) Any amount deducted and withheld under subdivision (b) of this subsection shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by such individual to the state Supplemental Nutrition Assistance Program agency as repayment of the individual's uncollected overissuance.

(e) For purposes of this subsection, unemployment compensation means any compensation payable under the Employment Security Law, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection applies only if arrangements have been made for reimbursement by the state Supplemental Nutrition Assistance Program agency for the administrative costs incurred by the commissioner under this subsection which are attributable to the repayment of uncollected overissuances to the state Supplemental Nutrition Assistance Program agency.

Source: Laws 1937, c. 108, § 15, p. 400; C.S.Supp.,1941, § 48-714; R.S.1943, § 48-647; Laws 1982, LB 801, § 5; Laws 1985, LB 339, § 32; Laws 1985, Second Spec. Sess., LB 7, § 76; Laws 1990, LB 974, § 1; Laws 1993, LB 523, § 26; Laws 1994, LB 1224, § 81; Laws 1995, LB 240, § 3; Laws 1996, LB 1044, § 275; Laws 1996, LB 1155, § 21; Laws 1997, LB 307, § 106; Laws 1997, LB 864, § 5; Laws 1998, LB 1073, § 56; Laws 2007, LB296, § 217; Laws 2009, LB288, § 15.

Cross References

Administrative Procedure Act, see section 84-920.

48-648 Combined tax; employer; payment; rules and regulations governing; related corporations or limited liability companies; professional employer organization.

(1) Combined tax shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law, with respect to wages for employment. Such combined tax shall become due and be paid by each employer to the commissioner for the State Unemployment Insurance Trust Fund and the Unemployment Trust Fund in such manner and at such times as the commissioner may, by rule and regulation, prescribe and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand

dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. In the payment of any combined tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. If the combined tax due for any reporting period is less than five dollars, the employer need not remit the combined tax.

(2) If two or more related corporations or limited liability companies concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations or limited liability companies, each such corporation or limited liability company shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations or limited liability companies. An employee of a wholly owned subsidiary shall be considered to be concurrently employed by the parent corporation, company, or other entity and the wholly owned subsidiary whether or not both companies separately provide remuneration.

(3) The professional employer organization shall report and pay combined tax, penalties, and interest owed upon wages earned by worksite employees under the client's employer account number using the client's combined tax rate. The client is liable for the payment of unpaid combined tax, penalties, and interest owed upon wages paid to worksite employees, and the worksite employees shall be considered employees of the client for purposes of the Employment Security Law.

Source: Laws 1937, c. 108, § 7, p. 382; Laws 1941, c. 94, § 5, p. 390; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-648; Laws 1971, LB 651, § 8; Laws 1981, LB 279, § 1; Laws 1985, LB 339, § 33; Laws 1992, LB 879, § 2; Laws 1994, LB 1337, § 7; Laws 1998, LB 834, § 1; Laws 2002, LB 921, § 3; Laws 2005, LB 484, § 7; Laws 2009, LB631, § 5.

48-648.01 Employer; submit quarterly wage reports; when.

The Commissioner of Labor may require by rule and regulation that each employer subject to the Employment Security Law shall submit to the commissioner quarterly wage reports on such forms and in such manner as the commissioner may prescribe. For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work

a hardship on the employer. The quarterly wage reports shall be used by the commissioner to make monetary determinations of claims for benefits.

Source: Laws 1985, LB 343, § 2; Laws 1986, LB 950, § 6; Laws 2005, LB 484, § 8; Laws 2009, LB631, § 6.

48-648.02 Wages, defined.

As used in sections 48-648 and 48-649 only, the term wages shall not include that part of the remuneration paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during a calendar year which exceeds (1) seven thousand dollars in calendar year 2005, (2) eight thousand dollars in calendar year 2006, and (3) nine thousand dollars in calendar year 2007 and each calendar year thereafter unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

Source: Laws 2005, LB 739, § 6.

48-649 Combined tax rate; how computed.

The commissioner shall, for each calendar year, determine the combined tax rate applicable to each employer on the basis of his or her actual experience in the payment of contributions and with respect to benefits charged against his or her separate experience account, in accordance with the following requirements:

(1) The commissioner shall, by December 1 of each calendar year, and based upon information available through the department, determine the state unemployment insurance tax rate for the following year. The state unemployment insurance tax rate shall be zero percent if:

(a) The average balance in the State Unemployment Insurance Trust Fund at the end of any three months in the preceding calendar year is greater than one percent of state taxable wages for the same preceding year; or

(b) The balance in the State Unemployment Insurance Trust Fund equals or exceeds thirty percent of the average month end balance of the state's account in the Unemployment Trust Fund for the three lowest calendar months in the preceding year;

(2)(a) If the state unemployment insurance tax rate is not zero percent as determined in this section, the combined tax rate shall be divided so that not less than eighty percent of the combined tax rate equals the contribution rate and not more than twenty percent of the combined tax rate equals the state unemployment insurance tax rate except for employers who are assigned a combined tax rate of five and four-tenths percent or more. For those employers, the state unemployment insurance tax rate shall equal zero and their combined tax rate shall equal their contribution rate.

(b) When the state unemployment insurance tax rate is determined to be zero percent pursuant to subdivision (1) of this section, the contribution rate for all employers shall equal one hundred percent of the combined tax rate;

(3) In calendar year 2005, an employer's combined tax rate shall be three and five-tenths percent of his or her annual payroll unless and until (a) benefits have been payable from and chargeable to his or her experience account throughout the preceding one calendar year and (b) contributions have been payable to the

fund and credited to his or her experience account with respect to the two preceding calendar years. Subject to fair and reasonable rules and regulations of the commissioner issued with due regard for the solvency of the fund, in calendar year 2005 the combined tax rate required of each employer who meets the requirements of subdivisions (a) and (b) of this subdivision shall be based directly on his or her contributions to and benefit experience of his or her experience account and shall be determined by the commissioner for each calendar year at its beginning. Such rate shall not be greater than three and five-tenths percent of his or her annual payroll if his or her experience account exhibits a positive balance as of the beginning of such calendar year, but for any employer who has been subject to the payment of contributions for any two preceding calendar years, regardless of whether such years are consecutive, and whose experience account exhibits a negative balance as of the beginning of such calendar year, the rate shall be greater than three and five-tenths percent of his or her annual payroll but not greater than five and four-tenths percent of his or her annual payroll until such time as the experience account exhibits a positive balance, and thereafter the rate shall not be greater than three and five-tenths percent of his or her annual payroll. For calendar year 2005, the standard rate shall be five and four-tenths percent of the employer's annual payroll. As used in this subdivision, standard rate shall mean the rate from which all reduced rates are calculated;

(4)(a) Effective January 1, 2006, an employer's combined tax rate (i) for employers other than employers engaged in the construction industry shall be the lesser of the state's average combined tax rate as determined pursuant to subdivisions (4)(e), (4)(f), and (4)(g) of this section or two and five-tenths percent and (ii) for employers in the construction industry shall be the category twenty rate determined pursuant to subdivisions (4)(e) and (4)(f) of this section, unless and until:

(A) Benefits have been payable from and chargeable to his or her experience account throughout the preceding four calendar quarters; and

(B) Wages for employment have been paid by the employer in each of the two preceding four-calendar-quarter periods.

For purposes of this subdivision (4)(a), employers engaged in the construction industry means all employers primarily engaged in business activities classified as sector 23 business activities under the North American Industry Classification System.

(b) In no event shall the combined tax rate for employers who fail to meet the requirements of subdivision (4)(a) of this section be less than one and twenty-five hundredths percent.

(c) For any employer who has not paid wages for employment during each of the two four-calendar-quarter periods ending on September 30 of any year, but has paid wages for employment in any two four-calendar-quarter periods, regardless of whether such four-calendar-quarter periods are consecutive, such employer's combined tax rate for the following tax year shall be:

(i) The highest combined tax rate for employers with a positive experience account balance if the employer's experience account balance exhibits a positive balance as of September 30 of the year of rate computation; or

(ii) The standard rate if the employer's experience account exhibits a negative balance as of September 30 of the year of rate computation.

(d) Beginning with rate calculations for calendar year 2006 and each year thereafter, the combined tax rate for employers who meet the requirements of subdivision (4)(a) of this section shall be calculated according to subdivisions (4)(e), (4)(f), and (4)(g) of this section and shall be based upon the employer's experience rating record and determined from the employer's reserve ratio, which is the percent obtained by dividing the amount by which, if any, the employer's contributions credited from the time the employer first or most recently became an employer, whichever date is later, and up to and including September 30 of the year the rate computation is made, plus any part of the employer's contributions due for that year paid on or before October 31 of such year, exceed the employer's benefits charged during the same period, by the employer's average annual taxable payroll for the sixteen-consecutive-calendar-quarter period ending September 30 of the year in which the rate computation is made. For an employer with less than sixteen consecutive calendar quarters of contribution experience, the employer's average taxable payroll shall be determined based upon the four-calendar-quarter periods for which contributions are payable.

(e) Each eligible experience rated employer shall be assigned to one of twenty rate categories with a corresponding experience factor as follows:

Category	Experience Factor
1	0.00
2	0.25
3	0.40
4	0.45
5	0.50
6	0.60
7	0.65
8	0.70
9	0.80
10	0.90
11	0.95
12	1.00
13	1.05
14	1.10
15	1.20
16	1.35
17	1.55
18	1.80
19	2.15
20	2.60

Eligible experience rated employers shall be assigned to rate categories from highest to lowest according to their experience reserve ratio with category one being assigned to accounts with the highest reserve ratios and category twenty being assigned to accounts with the lowest reserve ratios. Each category shall be limited to no more than five percent of the state's total taxable payroll, except that:

(i) Any employer which has a portion of its taxable wages fall into one category and a portion into the next higher category shall be assigned to the lower category;

(ii) No employer with a reserve ratio calculated to five decimal places equal to another employer similarly calculated shall be assigned to a higher rate than the employer to which it has the equal reserve ratio; and

(iii) No employer with a positive experience account balance shall be assigned to category twenty.

(f) The state's reserve ratio shall be calculated by dividing the amount available to pay benefits in the Unemployment Trust Fund and the State Unemployment Insurance Trust Fund as of September 30, 2005, and each September 30 thereafter, less any outstanding obligations and amounts appropriated therefrom by the state's total wages from the four calendar quarters ending on such September 30. For purposes of this section, total wages means all remuneration paid by an employer in employment. The state's reserve ratio shall be applied to the table in this subdivision to determine the yield factor for the upcoming rate year.

State's Reserve Ratio		Yield Factor
1.45 percent and above	=	0.70
1.30 percent up to but not including 1.45	=	0.75
1.15 percent up to but not including 1.30	=	0.80
1.00 percent up to but not including 1.15	=	0.90
0.85 percent up to but not including 1.00	=	1.00
0.70 percent up to but not including 0.85	=	1.10
0.60 percent up to but not including 0.70	=	1.20
0.50 percent up to but not including 0.60	=	1.25
0.45 percent up to but not including 0.50	=	1.30
0.40 percent up to but not including 0.45	=	1.35
0.35 percent up to but not including 0.40	=	1.40
0.30 percent up to but not including 0.35	=	1.45
Below 0.30 percent	=	1.50

Once the yield factor for the upcoming rate year has been determined, it is multiplied by the amount of unemployment benefits paid from combined tax during the four calendar quarters ending September 30 of the preceding year. The resulting figure is the planned yield for the rate year. The planned yield is divided by the total taxable wages for the four calendar quarters ending September 30 of the previous year and carried to four decimal places to create the average combined tax rate for the rate year.

(g) The average combined tax rate is assigned to rate category twelve as established in subdivision (4)(e) of this section. Rates for each of the remaining nineteen categories are determined by multiplying the average combined tax rate by the experience factor associated with each category and carried to four decimal places. Employers who are delinquent in filing their combined tax reports as of October 31 of any year shall be assigned to category twenty for the following calendar year unless the delinquency is corrected prior to December 31 of the year of rate calculation.

(h) As used in this subdivision (4) of this section, standard rate means the rate assigned to category twenty for that year. For calendar years 2006 and thereafter, the standard rate shall be not less than five and four-tenths percent of the employer's annual taxable payroll;

(5) Any employer may at any time make voluntary contributions up to the amount necessary to qualify for one rate category reduction, additional to the required contributions, to the fund to be credited to his or her account. Voluntary contributions received after March 10, 2005, for rate year 2005 or January 10 for rate year 2006 and thereafter shall not be used in rate calculations for the same calendar year;

(6) As used in sections 48-648 to 48-654, the term payroll means the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which the combined tax was measured; and

(7)(a) The state or any of its instrumentalities shall make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of the state or any of its instrumentalities. The commissioner after the end of each calendar quarter shall notify any state instrumentality or other public employer of the amount of regular benefits and one-half the amount of extended benefits paid that are attributable to service in its employment and the instrumentality or public employer so notified shall reimburse the fund within thirty days after receipt of such notice. For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer.

(b) After December 31, 1977, the state or any of its political subdivisions and any instrumentality of one or more of the foregoing or any other governmental entity for which services in employment as is provided by subdivision (4)(a) of section 48-604 are performed shall be required to pay contributions and after December 31, 1996, combined tax on wages paid for services rendered in its or their employment on the same basis as any other employer who is liable for the payment of combined tax under the Employment Security Law, unless the state or any political subdivision thereof and any instrumentality of one or more of the foregoing or any other governmental entity for which such services are performed files with the commissioner its written election not later than January 31, 1978, or if such employer becomes subject to this section after January 1, 1978, not later than thirty days after such subjectivity begins, to become liable to make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer prior to December 31, 1978, and in an amount equal to the full amount of regular benefits plus the full amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer after January 1, 1979. Eligible employers electing to make payments in lieu of contributions shall not be liable for state unemployment insurance tax payments. The commissioner, after the end of each calendar quarter, shall notify any such employer that has so elected of the amount of benefits for which it is liable to pay pursuant to its election that have been paid that are attributable to service in its employment and the employer so notified shall reimburse the fund within thirty days after receipt of such notice.

(c) Any employer which makes an election in accordance with subdivision (b) of this subdivision to become liable for payments in lieu of contributions shall continue to be liable for payments in lieu of contributions for all benefits paid based upon wages paid for service in employment of such employer while such election is effective and such election shall continue until such employer files with the commissioner, not later than December 1 of any calendar year, a written notice terminating its election as of December 31 of that year and thereafter such employer shall again be liable for the payment of contributions and for the reimbursement of such benefits as may be paid based upon wages paid for services in employment of such employer while such election was effective.

Source: Laws 1937, c. 108, § 7, p. 382; Laws 1939, c. 56, § 5, p. 239; Laws 1941, c. 94, § 5, p. 390; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-649; Laws 1947, c. 175, § 10, p. 577; Laws 1949, c. 163, § 12, p. 427; Laws 1953, c. 167, § 8, p. 533; Laws 1955, c. 190, § 9, p. 548; Laws 1972, LB 1392, § 8; Laws 1976, LB 819, § 2; Laws 1977, LB 509, § 7; Laws 1984, LB 249, § 1; Laws 1985, LB 339, § 34; Laws 1994, LB 1337, § 8; Laws 1995, LB 334, § 1; Laws 2005, LB 484, § 9; Laws 2005, LB 739, § 11; Laws 2007, LB265, § 9; Laws 2009, LB631, § 7.

48-649.01 Repealed. Laws 2007, LB 265, § 39.

48-652 Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement.

(1)(a) A separate experience account shall be established for each employer who is liable for payment of contributions. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. The commissioner shall prescribe such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. In addition to contributions credited to the experience account, each

employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the state's account in the Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. If the total credits as of such date to all employers' experience accounts are equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before January 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3)(a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if (i) such benefits were paid on the basis of a period of employment from which the claimant (A) left work voluntarily without good cause, (B) left work voluntarily due to a nonwork-connected illness or injury, (C) left work voluntarily with good cause to escape abuse as defined in section 42-903 between household members as provided in subdivision (1) of section 48-628.01, (D) left work from which he or she was discharged for misconduct connected with his or her work, (E) left work voluntarily and is entitled to unemployment benefits without disqualification in accordance with subdivision (3) or (5) of section 48-628.01, or (F) was involuntarily separated from employment and such benefits were paid pursuant to section 48-628.05, and (ii) the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner. No benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (5)(c)(iii) of section 48-627. No benefits shall be charged to the experience account of any employer if such benefits were paid during a week when the individual was participating in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1).

(b) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of subdivision (5) of section 48-627.

(c) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall by rules and regulations prescribe the manner in which benefits shall be charged against the account of several

employers for whom an individual performed employment during the same quarter or during the same base period. Any benefit check duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4)(a) An employer's experience account shall be deemed to be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or limited liability company members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if (i) the employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account and the employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account and (ii) the commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. The payment of benefits to an individual shall in no case be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

(6) A contributory or reimbursable employer shall be relieved of charges if the employer was previously charged for wages and the same wages are being used a second time to establish a new claim as a result of the October 1, 1988, change in the base period.

(7) If an individual's base period wage credits represent part-time employment for a contributory employer and the contributory employer continues to employ the individual to the same extent as during the base period, then the contributory employer's experience account shall not be charged if the contributory employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner.

Source: Laws 1937, c. 108, § 7, p. 383; Laws 1939, c. 56, § 5, p. 240; Laws 1941, c. 94, § 5, p. 392; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-652; Laws 1947, c. 175, § 11, p. 579; Laws 1949, c. 163, § 13, p. 428; Laws 1953, c. 167, § 9, p. 534; Laws 1957, c. 208, § 5, p. 732; Laws 1971, LB 651, § 9; Laws 1977, LB 509, § 8; Laws 1980, LB 800, § 5; Laws 1984, LB 995, § 1; Laws 1985, LB 339, § 37; Laws 1986, LB 901, § 1; Laws 1987, LB 275, § 1; Laws 1988, LB 1033, § 3; Laws 1993, LB 121, § 292; Laws

1994, LB 884, § 65; Laws 1994, LB 1337, § 11; Laws 1995, LB 1, § 12; Laws 1995, LB 240, § 4; Laws 2000, LB 953, § 9; Laws 2001, LB 418, § 1; Laws 2005, LB 739, § 12; Laws 2007, LB265, § 10; Laws 2008, LB500, § 1; Laws 2009, LB631, § 8; Laws 2010, LB1020, § 6.
Operative date July 1, 2011.

48-654 Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.

Subject to section 48-654.01, any employer that acquires the organization, trade, or business, or substantially all the assets thereof, of another employer shall immediately notify the commissioner thereof, and prior to September 6, 1985, shall, and on and after September 6, 1985, may, pursuant to rules and regulations prescribed by the commissioner, assume the position of such employer with respect to the resources and liabilities of such employer's experience account as if no change with respect to such employer's experience account has occurred. The commissioner may provide by rule and regulation for partial transfers of experience accounts, except that such partial transfers of accounts shall be construed to allow computation and fixing of contribution rates only on and after January 1, 1953, where an employer has transferred at any time subsequent to or on January 1, 1950, a definable and segregable portion of his or her payroll and business to a transferee-employer. For an acquisition which occurs during either of the first two calendar quarters of a calendar year or during the fourth quarter of the preceding calendar year, a new rate of contributions, payable by the transferee-employer with respect to wages paid by him or her after midnight of the last day of the calendar quarter in which such acquisition occurs and prior to midnight of the following September 30, shall be computed in accordance with this section. For the purpose of computing such new rate of contributions, the computation date with respect to any such acquisition shall be September 30 of the preceding calendar year and the term payroll shall mean the total amount of wages by which contributions to the transferee's account and to the transferor's account were measured for four calendar quarters ending September 30 preceding the computation date.

Source: Laws 1937, c. 108, § 7, p. 385; Laws 1941, c. 94, § 5, p. 394; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-654; Laws 1945, c. 115, § 6, p. 386; Laws 1947, c. 175, § 13, p. 582; Laws 1953, c. 169, § 1, p. 543; Laws 1985, LB 336, § 1; Laws 1985, LB 339, § 38; Laws 2005, LB 484, § 10; Laws 2009, LB631, § 9.

48-654.01 Employer's experience account; transferable; when; violation; penalty.

(1) For purposes of this section:

(a) Knowingly means having actual knowledge of or acting with deliberate ignorance or reckless disregard of the prohibition involved;

(b) Person means an individual, a partnership, a limited liability company, a corporation, or any other legally recognized entity;

(c) Trade or business includes the employer's workforce; and

(d) Violates or attempts to violate includes intent to evade, misrepresentation, or willful nondisclosure.

(2) Notwithstanding any other provision of law, the following shall apply regarding assignment of combined tax rates and transfer of an employer's experience account:

(a) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the employer's experience account attributable to the transferred trade or business shall be transferred to the employer to whom such business is transferred. The rates of both employers shall be recalculated in accordance with section 48-654. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce and such trade or business is performed by the employer to whom the workforce is transferred. If, following a transfer of experience under this subdivision, the commissioner determines that a substantial purpose of the transfer of trade or business was to obtain a lower combined tax rate, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account; or

(b) Whenever a person is not an employer at the time it acquires the trade or business of an employer, the employer's experience account of the acquired business shall not be transferred to such person if the commissioner finds that the business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate. Instead, such person shall be assigned the new employer combined tax rate under section 48-649. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate, the commissioner shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(3)(a) If a person knowingly violates or attempts to violate this section, or if a person knowingly advises another person in a way that results in a violation of this section and:

(i) The person is an employer, such employer shall be assigned the highest combined tax rate assignable under section 48-649 for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such rate year. However, if the person's business is already at the highest combined tax rate or if the amount of increase in the combined tax rate would be less than two percent, then a penalty combined tax rate of two percent of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such year; or

(ii) The person is not an employer, such person shall be subject to a civil penalty of not more than five thousand dollars.

(b) In addition to any civil penalties that may apply under this subsection, such person shall be guilty of a Class IV felony.

(4) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of evading combined tax liability.

Source: Laws 2005, LB 484, § 11.

48-655 Combined taxes; payments in lieu of contributions; collections; set-offs; interest; actions; offset against federal income tax refund; procedure.

(1) Combined taxes or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment into the unemployment trust fund of another state or to the federal government. Interest collected pursuant to this section shall be paid in accordance with subdivision (1)(b) of section 48-621. If, after due notice, any employer defaults in any payment of combined taxes or payments in lieu of contributions or interest thereon, the amount due may be collected (a) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action or (b) by setoff against any state income tax refund due the employer pursuant to sections 77-27,197 to 77-27,209. Civil actions brought under this section to collect combined taxes or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of contributions, penalties, and interest due and payable for which the commissioner has determined the person to be liable due to fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor, by certified mail return receipt requested, that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

Source: Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 249; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-655; Laws 1947, c. 175, § 14, p. 582; Laws 1949, c. 163, § 14(1), p. 429; Laws 1971, LB 651, § 10; Laws 1985, LB 337, § 1; Laws 1986, LB 811, § 137; Laws 1993, LB 46, § 14; Laws 1994, LB 1337, § 12; Laws 1995, LB 1, § 13; Laws 2000, LB 953, § 10; Laws 2009, LB631, § 10.

48-663.01 Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; levy authorized; procedure; failure or refusal to honor levy; liability.

(1) Notwithstanding any other provision of this section, or of section 48-627 or 48-663, an individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her or who willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, shall forfeit all or part of his or her benefit rights, as determined by a deputy, with respect to uncharged wage credits accrued prior to the date of such failure or to the date of such falsifications. An appeal may be taken from any such determination in the manner provided in section 48-634.

(2)(a) If any person liable to repay an overpayment of unemployment benefits resulting from a determination under subsection (1) of this section fails or refuses to repay such overpayment within twelve months after the date the overpayment determination becomes final, the commissioner may issue a levy on salary, wages, or other regular payments due to or received by such person and such levy shall be continuous from the date the levy is served until the amount of the levy is satisfied. Notice of the levy shall be mailed to the person whose salary, wages, or other regular payment is levied upon at his or her last-known address not later than the date that the levy is served. Exemptions or limitations on the amount of salary, wages, or other regular payment that can be garnished or levied upon by a judgment creditor shall apply to levies made pursuant to this section. Appeal of a levy may be made in the manner provided in section 48-634, but such appeal shall not act as a stay of the levy.

(b) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the person liable to repay the overpayment that are under the control of the person upon whom the levy is served at the time of service and thereafter.

Source: Laws 1949, c. 163, § 16(2), p. 432; Laws 2007, LB265, § 11.

48-664 Benefits; false statements by employer; penalty; failure or refusal to make combined tax payment.

Any employer, whether or not subject to the Employment Security Law, or any officer or agent of such an employer or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, to obtain benefits for an individual not entitled thereto, to avoid becoming or remaining subject to such law, or to avoid or reduce any contribution or other payment required from an employer under sections 48-648 and 48-649, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required under the Employment Security Law or to produce or permit the inspection or copying of records as required under such law, shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense. An individual employer, partner, corporate officer, or member of a limited liability company or limited liability partnership who willfully fails or refuses to make any combined tax payment shall be jointly and severally liable for the payment of such combined tax and any penalties and interest owed thereon. When an unemployment benefit overpayment occurs, in whole or in part, as the result of a violation of this section by an employer, the amount of the

overpayment recovered shall not be credited back to such employer's experience account.

Source: Laws 1937, c. 108, § 16, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-664; Laws 1953, c. 167, § 13, p. 539; Laws 1977, LB 40, § 295; Laws 1985, LB 339, § 45; Laws 2005, LB 484, § 12; Laws 2007, LB265, § 12.

48-665 Benefits; erroneous payments; recovery; offset against federal income tax refund; procedure.

(1) Any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled shall be liable to repay such sum to the commissioner for the fund. Any such erroneous benefit payments shall be collectible (a) without interest by civil action in the name of the commissioner, (b) by offset against any future benefits payable to the claimant with respect to the benefit year current at the time of such receipt or any benefit year which may commence within three years after the end of such current benefit year, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, or (c) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209.

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled as a result of fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

Source: Laws 1937, c. 108, § 16, p. 401; Laws 1941, c. 94, § 12, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-665; Laws 1953, c. 167, § 14(1), p. 539; Laws 1969, c. 403, § 2, p. 1400; Laws 1980, LB 798, § 1; Laws 1985, LB 339, § 46; Laws 1986, LB 950, § 8; Laws 1993, LB 46, § 15; Laws 2009, LB631, § 11.

48-668 Unemployment compensation; services performed in another state; arrangements with other states.

(1) The commissioner is hereby authorized to enter into arrangements with the appropriate and duly authorized agencies of other states or the federal government, or both, whereby:

(a) Services performed by an individual for a single employer for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states in which (i) any part of such individual's service is performed, (ii) such individual has his or her residence, or (iii) the employer maintains a place of business, if there is in effect, as to such services, an election by an employer with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which services performed by such individual for such employer are deemed to be performed entirely within such state;

(b) Service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employer which customarily operates in more than one state shall be deemed to be service performed entirely within the state in which such employer maintains the headquarters of his or her business if there is in effect, as to such service, an approved election by an employer with the affirmative consent of each such individual, pursuant to which service performed by such individual for such employer is deemed to be performed entirely within such state;

(c) Potential rights to benefits under the Employment Security Law may constitute the basis for payment of benefits by another state or the federal government and potential rights to benefits accumulated under the law of another state or the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under the Employment Security Law or under the law of such state or the federal government or under such combination of the provisions of both laws, as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service subject to the law of another state or the federal government, and provision for reimbursement from the fund for such benefits as are paid by another state or the federal government on the basis of wages and service subject to the Employment Security Law. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law; and

(d) Wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his or her benefits under the Employment Security Law; and wages for insured work, on the basis of which an individual may become entitled to benefits under the Employment Security Law, shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the federal government. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such of the benefits paid under the Employment Security Law upon the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law upon the basis of wages for insured work, as the commissioner finds will be fair and reasonable to all affected interests. Reimbursement paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law.

(2) Notwithstanding any other provisions of this section, the commissioner shall participate in any arrangements for the payment of benefits on the basis of

combining an individual's wages and employment covered under the Employment Security Law with his or her wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for (a) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws and (b) avoiding the duplicate use of wages and employment by reason of such combining. However, no benefits paid pursuant to an agreement to combine wages entered into under this subsection shall be charged against any employer's experience account if the employer's experience account, under the same or similar circumstances, would not be charged under the Employment Security Law. Benefits received by a claimant pursuant to an agreement entered into under this subsection to which he or she is not entitled shall be credited to an employer's experience account or reimbursement account in the same manner as claims paid based solely upon the laws of this state.

Source: Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp.,1941, § 48-717; R.S.1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(1), p. 432; Laws 1971, LB 651, § 13; Laws 1985, LB 339, § 49; Laws 2009, LB631, § 12.

48-668.02 Unemployment compensation; services performed in another state; reimbursements to and from other states.

Reimbursements paid from the fund pursuant to subdivisions (1)(c) and (1)(d) of section 48-668 shall be deemed to be benefits for the purposes of the Employment Security Law. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to section 48-668.

Source: Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp.,1941, § 48-717; R.S.1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(3), p. 434; Laws 1985, LB 339, § 50; Laws 2009, LB631, § 13.

48-669 Claimant; benefit amounts; how computed.

(1) With respect to any claimant for whom there is current a benefit year, which has not expired prior to the effective date of any change in the weekly benefit amounts prescribed in section 48-624 or the maximum annual benefit amount prescribed in section 48-626, the weekly benefit amount and the maximum annual benefit amount shall be those amounts determined prior to the effective date of such change.

(2) After December 31, 1995, any changes in the weekly benefit amounts prescribed in section 48-624 or in the maximum annual benefit amount prescribed in section 48-626 shall become effective on January 1 of the year following such legislative enactment.

(3) After December 31, 2000, any change in the weekly benefit amounts prescribed in section 48-624 or any change in the maximum annual benefit

amount prescribed in section 48-626 shall be applicable for the calendar year following the annual determination made pursuant to section 48-121.02.

Source: Laws 1949, c. 163, § 18, p. 435; Laws 1951, c. 157, § 2, p. 631; Laws 1953, c. 168, § 2, p. 542; Laws 1955, c. 190, § 11, p. 551; Laws 1957, c. 209, § 3, p. 741; Laws 1959, c. 229, § 3, p. 803; Laws 1961, c. 235, § 4, p. 698; Laws 1963, c. 291, § 4, p. 874; Laws 1965, c. 286, § 2, p. 820; Laws 1967, c. 299, § 2, p. 815; Laws 1969, c. 401, § 2, p. 1394; Laws 1971, LB 651, § 14; Laws 1972, LB 1391, § 2; Laws 1973, LB 333, § 2; Laws 1974, LB 775, § 2; Laws 1975, LB 475, § 2; Laws 1977, LB 337, § 2; Laws 1979, LB 183, § 2; Laws 1983, LB 524, § 2; Laws 1985, LB 216, § 2; Laws 1987, LB 446, § 3; Laws 1994, LB 286, § 4; Laws 1998, LB 225, § 4; Laws 2005, LB 739, § 13.

ARTICLE 7
BOILER INSPECTION

Section

48-720 Terms, defined.

As used in the Boiler Inspection Act, unless the context otherwise requires:

(1) Authorized inspection agency means an authorized inspection agency as defined in NB-369, National Board Qualifications and Duties for Authorized Inspection Agencies (AIAs) Performing Inservice Inspection Activities and Qualifications for Inspectors of Boilers and Pressure Vessels;

(2) Board means the Boiler Safety Code Advisory Board;

(3) Boiler means a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam or vapor is superheated, or any combination thereof, under pressure or vacuum, for internal or external use to itself, by the direct application of heat and an unfired pressure vessel in which the pressure is obtained from an external source or by the application of heat from an indirect or direct source. Boiler includes a fired unit for heating or vaporizing liquids other than water only when such unit is separate from processing systems and complete within itself;

(4) Commissioner means the Commissioner of Labor; and

(5) Department means the Department of Labor.

Source: Laws 1987, LB 462, § 2; Laws 1988, LB 863, § 2; Laws 1997, LB 641, § 1; Laws 2007, LB226, § 1.

48-722 State boiler inspector; inspection; exception; contract with authorized inspection agency; certification.

(1) Except as provided in subsections (3) and (4) of this section, the state boiler inspector shall inspect or cause to be inspected at least once every twelve months all boilers required to be inspected by the Boiler Inspection Act to determine whether the boilers are in a safe and satisfactory condition and properly constructed and maintained for the purpose for which the boiler is used, except that (a) hobby boilers, steam farm traction engines, portable and stationary show engines, and portable and stationary show boilers, which are not otherwise exempted from the act pursuant to section 48-726, shall be subject to inspection at least once every twenty-four months and (b) the commissioner may, by rule and regulation, establish inspection periods for pressure vessels of more than twelve months, but not to exceed the inspection period recommended in the National Board Inspection Code or the American Petroleum Institute Pressure Vessel Inspection Code API-510 for pressure vessels being used for similar purposes. In order to ensure that inspections are performed in a timely manner, the department may contract with an authorized inspection agency to perform any inspection authorized under the Boiler Inspection Act. If the department contracts with an authorized inspection agency to perform inspections, such contract shall be in writing and shall contain an indemnification clause wherein the authorized inspection agency agrees to indemnify and defend the department for loss occasioned by negligent or tortious acts committed by special inspectors employed by such authorized inspection agency when performing inspections on behalf of the department.

(2) No boilers required to be inspected by the act shall be operated without valid and current certification pursuant to rules and regulations adopted and promulgated by the commissioner in accordance with the requirements of the Administrative Procedure Act. The owner of any boiler installed after September 2, 1973, shall file a manufacturer's data report covering the construction of such boiler with the state boiler inspector. Such reports shall be used to assist the state boiler inspector in the certification of boilers. No boiler required to be inspected by the Boiler Inspection Act shall be operated at any type of public gathering or show without first being inspected and certified as to its safety by the state boiler inspector or a special inspector commissioned pursuant to section 48-731. Antique engines with boilers may be brought into the state from other states without inspection, but inspection as provided in this section shall be made and the boiler certified as safe before being operated.

(3) The commissioner may, by rule and regulation, waive the inspection of unfired pressure vessels registered with the State of Nebraska if the commissioner finds that the owner or user of the unfired pressure vessel follows a safety inspection and repair program that is based upon nationally recognized standards.

(4) A boiler that is used as a water heater to supply potable hot water and that is not otherwise exempt from inspection under the act pursuant to section 48-726 shall be subject to inspection at least once every twenty-four months in accordance with a schedule of inspection established by the commissioner by rule and regulation.

Source: Laws 1943, c. 112, § 2(1), p. 392; R.S.1943, § 48-702; Laws 1961, c. 235, § 5, p. 698; Laws 1971, LB 886, § 1; Laws 1973, LB 481, § 1; R.S.1943, (1984), § 48-702; Laws 1987, LB 462, § 4; Laws 1995, LB 438, § 2; Laws 1997, LB 641, § 2; Laws 1998, LB 395, § 13; Laws 1999, LB 66, § 2; Laws 2007, LB226, § 2; Laws 2009, LB627, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

48-726 Boilers and vessels to which act does not apply.

The Boiler Inspection Act shall not apply to:

(1) Boilers of railway locomotives subject to federal inspection;

(2) Boilers operated and regularly inspected by railway companies operating in interstate commerce;

(3) Boilers under the jurisdiction and subject to regular periodic inspection by the United States Government;

(4) Boilers used exclusively for agricultural purposes;

(5) Steam heating boilers in single-family residences and apartment houses with four or less units using a pressure of less than fifteen pounds per square inch and having a safety valve set at not higher than fifteen pounds pressure per square inch;

(6) Heating boilers using water in single-family residences and apartment houses with four or less units using a pressure of less than thirty pounds per square inch and having a safety valve set at not higher than thirty pounds pressure per square inch;

(7) Fire engine boilers brought into the state for temporary use in times of emergency;

(8) Boilers of a miniature model locomotive or boat or tractor or stationary engine constructed and maintained as a hobby and not for commercial use and having a diameter of less than ten inches inside diameter and a grate area not in excess of one and one-half square feet and that are properly equipped with a safety valve;

(9) Hot water supply boilers if none of the following limitations is exceeded: (a) Two hundred thousand British thermal units of input; (b) one hundred twenty gallons of nominal capacity; or (c) two hundred ten degrees Fahrenheit output;

(10) Unfired pressure vessels not exceeding (a) five cubic feet in volume or (b) a pressure of two hundred fifty pounds per square inch;

(11) Unfired pressure vessels owned and maintained by a district or corporation organized under the provisions of Chapter 70, article 6; and

(12) Unfired pressure vessels (a) not exceeding a maximum allowable working pressure of five hundred pounds per square inch, (b) that contain carbon dioxide, helium, oxygen, nitrogen, argon, hydrofluorocarbon refrigerant, or any other nonflammable gas determined by the commissioner not to be a risk to the public, (c) that are manufactured and repaired in accordance with applicable American Society of Mechanical Engineers standards, and (d) that are installed in accordance with the manufacturer's specifications.

Source: Laws 1943, c. 112, § 3, p. 393; R.S.1943, § 48-706; Laws 1965, c. 288, § 2, p. 825; Laws 1969, c. 406, § 1, p. 1404; R.S.1943, (1984), § 48-706; Laws 1987, LB 462, § 8; Laws 1995, LB 438, § 6; Laws 1997, LB 641, § 3; Laws 1998, LB 395, § 15; Laws 1999, LB 66, § 3; Laws 2005, LB 122, § 1.

48-730 Equipment; installation; notice to commissioner; reinspection.

Before any boiler required to be inspected by the Boiler Inspection Act is installed, a ten days' written notice of intention to install the boiler shall be given to the commissioner, except that the commissioner may, upon application and good cause shown, waive the ten-day prior notice requirement. The notice shall designate the proposed place of installation, the type and capacity of the boiler, the use to be made of the boiler, the name of the company which manufactured the boiler, and whether the boiler is new or used. A boiler moved from one location to another shall be reinspected prior to being placed back into use.

Source: Laws 1943, c. 112, § 5, p. 394; R.S.1943, § 48-710; R.S.1943, (1984), § 48-710; Laws 1987, LB 462, § 12; Laws 1995, LB 438, § 9; Laws 1998, LB 395, § 16; Laws 2007, LB226, § 3.

48-731 Special inspector commission; requirements; inspection under provision of a city ordinance; inspection under the act not required; when; insurance coverage required.

(1)(a) The commissioner may issue a special inspector commission to an inspector in the employ of a company if the inspector has previously passed the examination prescribed by the National Board of Boiler and Pressure Vessel Inspectors and the company is an insurance company authorized to insure boilers in this state against loss from explosion or is an authorized inspection agency.

(b) Each special inspector employed by an insurance company or authorized inspection agency who has been issued a special inspector commission under this section shall submit to the state boiler inspector complete data of each boiler required to be inspected by the Boiler Inspection Act which is insured or inspected by such insurance company or authorized inspection agency on forms approved by the commissioner.

(c) Insurance companies shall notify the department of new, canceled, or suspended risks relating to insured boilers. Insurance companies shall notify the department of all boilers which the company insures, or any boiler for which insurance has been canceled, not renewed, or suspended within thirty days after such action. Authorized inspection agencies shall notify the department of any new or canceled agreements relating to the inspection of boilers or pressure vessels within thirty days after such action.

(d) Insurance companies and authorized inspection agencies shall immediately notify the department of defective boilers. If a special inspector employed by an insurance company, upon the first inspection of new risk, finds that the boiler or any of the appurtenances are in such condition that the inspector's company refuses insurance, the company shall immediately submit a report of the defects to the state boiler inspector.

(2) The inspection required by the act shall not be required if (a) an annual inspection is made under a city ordinance which meets the standards set forth in the act, (b) a certificate of inspection of the boiler is filed with the commissioner with a certificate fee, and (c) the inspector for the city making such inspection is required by such ordinance to either hold a commission from the National Board of Boiler and Pressure Vessel Inspectors commensurate with the type of inspections performed by the inspector for the city or acquire the commission within twelve months after appointment.

(3) The commissioner may, by rule and regulation, provide for the issuance of a special inspector commission to an inspector in the employ of a company using or operating an unfired pressure vessel subject to the act for the limited purpose of inspecting unfired pressure vessels used or operated by such company.

(4) All inspections made by a special inspector shall be performed in accordance with the act, and a complete report of such inspection shall be filed with the department in the time, manner, and form prescribed by the commissioner.

(5) The state boiler inspector may, at his or her discretion, inspect any boiler to which a special inspector commission applies.

(6) The commissioner may, for cause, suspend or revoke any special inspector commission.

(7) No authorized inspection agency shall perform inspections of boilers in the State of Nebraska unless the authorized inspection agency has insurance coverage for professional errors and omissions and comprehensive and general liability under a policy or policies written by an insurance company authorized to do business in this state in effect at the time of such inspection. Such insurance policy or policies shall be in an amount not less than the minimum amount as established by the commissioner. Such minimum amount shall be established with due regard to the protection of the general public and the availability of insurance coverage, but such minimum insurance coverage shall not be less than one million dollars for professional errors and omissions and one million dollars for comprehensive and general liability.

Source: Laws 1943, c. 112, § 6(2), p. 394; R.S.1943, § 48-712; Laws 1947, c. 176, § 1, p. 584; Laws 1980, LB 959, § 2; R.S.1943, (1984), § 48-712; Laws 1987, LB 462, § 13; Laws 1995, LB 438, § 10; Laws 1998, LB 395, § 17; Laws 2007, LB226, § 4.

48-736 Violation; penalty.

Any person, persons, corporations, and the directors, managers, superintendents, and officers of such corporations violating the Boiler Inspection Act shall be guilty of a Class III misdemeanor.

Source: Laws 1943, c. 112, § 9, p. 396; R.S.1943, § 48-716; Laws 1977, LB 40, § 297; R.S.1943, (1984), § 48-716; Laws 1987, LB 462, § 18; Laws 2007, LB226, § 5.

ARTICLE 8

COMMISSION OF INDUSTRIAL RELATIONS

Section

48-801 Terms, defined.

As used in the Industrial Relations Act, unless the context otherwise requires:

(1) Person shall include an individual, partnership, limited liability company, association, corporation, business trust, or other organized group of persons;

(2) Governmental service shall mean all services performed under employment by the State of Nebraska, any political or governmental subdivision thereof, any municipal corporation, or any public power district or public power and irrigation district;

(3) Public utility shall include any individual, partnership, limited liability company, association, corporation, business trust, or other organized group of persons, any political or governmental subdivision of the State of Nebraska, any public corporation, or any public power district or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service, electric light, heat and power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof;

(4) Employer shall mean the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia. Employer shall also mean any municipal corporation, any public power district or public power and irrigation district, or any public utility;

(5) Employee shall include any person employed by any employer;

(6) Labor organization shall mean any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(7) Industrial dispute shall include any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or refusal to discuss terms or conditions of employment;

(8) Commission shall mean the Commission of Industrial Relations;

(9) Commissioner shall mean a member of the commission; and

(10) Supervisor shall mean any employee having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

Source: Laws 1947, c. 178, § 1, p. 586; Laws 1967, c. 303, § 1, p. 823; Laws 1967, c. 304, § 1, p. 826; Laws 1969, c. 407, § 1, p. 1405; Laws 1972, LB 1228, § 1; Laws 1985, LB 213, § 1; Laws 1986, LB 809, § 2; Laws 1993, LB 121, § 294; Laws 2007, LB472, § 1.

48-804 Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.

(1) The Commission of Industrial Relations shall be composed of five commissioners appointed by the Governor, with the advice and consent of the Legislature. The commissioners shall be representative of the public. Each

commissioner shall be appointed and hold office for a term of six years and until a successor has qualified. In case of a vacancy, the Governor shall appoint a successor to fill the vacancy for the unexpired term.

(2) Any commissioner may be removed by the Governor for the same causes as a judge of the district court may be removed.

(3) The commissioners shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding officer for the next two years, who shall preside at all hearings by the commission en banc, and shall assign the work of the commission to the several commissioners and perform such other supervisory duties as the needs of the commission may require. A majority of the commissioners shall constitute a quorum to transact business. The act or decision of any three of the commissioners shall in all cases be deemed the act or decision of the commission.

(4) The commission shall not be subject to the Administrative Procedure Act.

Source: Laws 1947, c. 178, § 4, p. 588; Laws 1969, c. 407, § 2, p. 1407; Laws 1974, LB 819, § 1; Laws 1979, LB 444, § 2; Laws 2007, LB472, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

48-804.01 Presiding officer; clerk; personnel; appointment; duties.

The presiding officer of the commission shall, with the advice and consent of the Governor, appoint a clerk of such commission who shall hold office at the pleasure of the commission. The presiding officer shall in like manner appoint such other assistants and employees as he or she may deem necessary. The clerk shall, under the direction of the presiding officer, keep a full and true record of the proceedings of the commission and record all pleadings and other papers filed with the commission, and no other action shall be taken thereon until the same has been recorded. The clerk shall in like manner issue all necessary notices and writs, superintend the business of the commission, and perform such other duties as the commission may direct. All other assistants and employees of the commission shall perform such duties, pertaining to the affairs thereof, as the commission may direct. The clerk of the commission shall administratively determine, prior to a hearing on the question of representation, the validity of the employee authorizations for representation by an employee labor organization.

Source: Laws 1974, LB 819, § 3; Laws 2007, LB472, § 3.

48-805 Commissioners; qualifications.

The commissioners shall not be appointed because they are representatives of either capital or labor, but they shall be appointed because of their experience and knowledge in legal, financial, labor, and industrial matters.

Source: Laws 1947, c. 178, § 5, p. 589; Laws 2007, LB472, § 4.

48-806 Commissioner; compensation; expenses.

As soon as the same may be legally paid under the Constitution of Nebraska, the compensation of each commissioner shall be four hundred seventy-five dollars per day for each day's time actually engaged in the performance of the duties of his or her office. Each commissioner shall also be paid his or her

necessary traveling expenses incurred while away from his or her place of residence upon business of the commission in accordance with sections 81-1174 to 81-1177.

Source: Laws 1947, c. 178, § 6, p. 599; Laws 1971, LB 822, § 1; Laws 1976, LB 710, § 1; Laws 1977, LB 302, § 1; Laws 1979, LB 444, § 3; Laws 1981, LB 188, § 1; Laws 1981, LB 204, § 83; Laws 1991, LB 856, § 1; Laws 2007, LB211, § 1; Laws 2007, LB472, § 5.

48-816.01 Hearing officer; appointment; when.

The presiding officer of the commission may, when he or she deems it necessary to expedite the determination of cases filed with the commission, appoint a hearing officer to hear evidence and make recommended findings and orders in any case or to make recommended determinations after a representation election has been ordered and during the course of such election. Any person appointed as a hearing officer shall be an attorney admitted to practice in Nebraska and shall be knowledgeable in the rules of civil procedure and evidence applicable to the district courts.

Source: Laws 1979, LB 444, § 6; Laws 2007, LB472, § 6.

48-838 Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when.

(1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for employees, except that in no event shall a contract between an employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent employees, nor shall any contract bar for more than three years a petition by employees seeking an election to revoke the authority of an agent to represent them. Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one member of the commission who shall be designated to act in such capacity by the presiding officer of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the employer is located to conduct the election in accordance with the rules and regulations established by the commission. Except as provided in the State Employees Collective Bargaining Act, the commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission shall consider established bargaining units and established policies of the employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of employees of less than departmental size shall not be appropriate.

(3) Except as provided in the State Employees Collective Bargaining Act, the commission shall not order an election until it has determined that at least

thirty percent of the employees in an appropriate unit have requested in writing that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) Except as provided in the State Employees Collective Bargaining Act, the commission shall only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment, except that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials.

Any employee may choose his or her own representative in any grievance or legal action regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who is not a member of the labor organization chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the employee in such grievance or legal action.

The certification of an exclusive collective-bargaining agent shall not preclude any employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement which may be in effect.

Source: Laws 1972, LB 1228, § 4; Laws 1974, LB 819, § 10; Laws 1986, LB 809, § 10; Laws 1987, LB 661, § 30; Laws 2002, LB 29, § 1; Laws 2007, LB472, § 7.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

ARTICLE 10
AGE DISCRIMINATION

Section
48-1001. Act, how cited; discrimination in employment because of age; policy; declaration of purpose.
48-1002. Terms, defined.
48-1003. Limitation on prohibitions; practices not prevented or precluded.
48-1004. Unlawful employment practices; enumerated.
48-1005. Violations; penalty.
48-1006. Repealed. Laws 2007, LB 265, § 40.
48-1007. Equal Opportunity Commission; enforcement; powers.
48-1008. Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written change; limitation on action; respondent; file written response; commission; powers.

48-1001 Act, how cited; discrimination in employment because of age; policy; declaration of purpose.

(1) Sections 48-1001 to 48-1010 shall be known and may be cited as the Age Discrimination in Employment Act.

(2)(a) The Legislature hereby finds that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, is incompatible with the Constitution, deprives the state of the fullest utilization of its capacities for production, and endangers the general welfare.

(b) Hiring bias against workers forty years or more of age deprives the state of its most important resource of experienced employees, adds to the number of persons receiving public assistance, and deprives older people of the dignity and status of self-support.

(c) The right to employment otherwise lawful without discrimination because of age, where the reasonable demands of the position do not require such an age distinction, is hereby recognized as and declared to be a right of all the people of the state which shall be protected as provided in the act.

(d) It is hereby declared to be the policy of the state to protect the right recognized and declared in subdivision (2)(c) of this section and to eliminate all such discrimination to the fullest extent permitted. The Age Discrimination in Employment Act shall be construed to effectuate such policy.

Source: Laws 1963, c. 281, § 1, p. 838; Laws 1972, LB 1357, § 1; Laws 2007, LB265, § 13.

48-1002 Terms, defined.

For purposes of the Age Discrimination in Employment Act:

(1) Person includes one or more individuals, partnerships, limited liability companies, associations, labor organizations, corporations, business trusts, legal representatives, or any organized group of persons;

(2) Employer means any person having in his or her employ twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and includes the State of Nebraska, governmental agencies, and political subdivisions, regardless of the number of employees, any person acting for or in the interest of an employer, directly or indirectly, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, but such term does not include (a) the United States, (b) a corporation wholly owned by the government of the United States, or (c) an Indian tribe;

(3) Labor organization means any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment;

(4) Employee means an individual employed by any employer; and

(5) Employment agency means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for

employees opportunities to work for an employer and includes an agent of such a person, but does not include an agency of the United States, except that such term does include the United States Employment Service and the system of state and local employment services receiving federal assistance.

Source: Laws 1963, c. 281, § 2, p. 839; Laws 1972, LB 1357, § 2; Laws 1973, LB 265, § 1; Laws 1977, LB 162, § 20; Laws 1983, LB 424, § 1; Laws 1983, LB 626, § 73; Laws 1993, LB 121, § 296; Laws 2007, LB265, § 14.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

48-1003 Limitation on prohibitions; practices not prevented or precluded.

(1) The prohibitions of the Age Discrimination in Employment Act shall be limited to the employment of individuals who are forty years or more of age.

(2) Nothing contained in the act shall be construed as making it unlawful for an employer, employment agency, or labor organization (a) to take action otherwise prohibited under the act when age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or when the differentiation is based on reasonable factors other than age, such as physical conditions; or (b) to discharge or otherwise discipline an employee for good cause.

Source: Laws 1963, c. 281, § 3, p. 839; Laws 1972, LB 1357, § 3; Laws 1979, LB 161, § 2; Laws 1983, LB 424, § 2; Laws 2007, LB265, § 15.

48-1004 Unlawful employment practices; enumerated.

(1) It shall be an unlawful employment practice for an employer:

(a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to the employee's terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

(b) To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against individuals because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive an individual of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or would affect adversely his or her wages, hours, or employment.

(3) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of such individual's age or to classify or refer for employment any individual on the basis of his or her age.

(4) It shall be an unlawful employment practice for any employer, employment agency, or labor organization to discharge, expel, or otherwise discriminate against any person because he or she opposed any unlawful employment

practice specified in the Age Discrimination in Employment Act or has filed a charge or suit, testified, participated, or assisted in any proceeding under the act.

Source: Laws 1963, c. 281, § 4, p. 840; Laws 1972, LB 1357, § 4; Laws 1977, LB 162, § 21; Laws 2007, LB265, § 16.

48-1005 Violations; penalty.

Any person who violates any provision of the Age Discrimination in Employment Act or who forcibly resists, opposes, impedes, intimidates, or interferes with the Equal Opportunity Commission or any of its duly authorized representatives while engaged in its, his, or her duties under the act shall be guilty of a Class III misdemeanor. No person shall be imprisoned under this section except for a second or subsequent conviction.

Source: Laws 1963, c. 281, § 5, p. 840; Laws 1972, LB 1357, § 8; Laws 1977, LB 40, § 300; Laws 2007, LB265, § 17.

48-1006 Repealed. Laws 2007, LB 265, § 40.

48-1007 Equal Opportunity Commission; enforcement; powers.

The Age Discrimination in Employment Act shall be administered by the Equal Opportunity Commission as established by section 48-1116. The commission shall have the power (1) to make delegations, to appoint such agents and employees and to pay for technical assistance, including legal assistance, on a fee-for-service basis, as it deems necessary to assist it in the performance of its functions under the act, (2) to cooperate with other federal, state, and local agencies and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of the act, (3) to make investigations, to issue or cause to be served interrogatories, and to require keeping of records necessary or appropriate for the administration of the act, and (4) to bring civil action in its name in any court of competent jurisdiction against any person deemed to be violating the act to compel compliance with the act or to enjoin any such person from continuing any practice that is deemed to be in violation of the act. The commission may seek judicial enforcement through the office of the Attorney General to require the answering of interrogatories and to gain access to evidence or records relevant to the charge under investigation.

Source: Laws 1972, LB 1357, § 5; Laws 1977, LB 162, § 22; Laws 2007, LB265, § 18.

48-1008 Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written change; limitation on action; respondent; file written response; commission; powers.

(1) Any person aggrieved by a suspected violation of the Age Discrimination in Employment Act shall file with the Equal Opportunity Commission a formal complaint in such manner and form prescribed by the commission. The commission shall make an investigation and may initiate an action to enforce the rights of such employee under the provisions of the act. If the commission does not initiate an action within sixty days after receipt of a complaint, the person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of the act. Filing

of an action by either the commission or the person aggrieved shall be a bar to the filing of the action by the other.

(2) A written charge alleging violation of the Age Discrimination in Employment Act shall be filed within three hundred days after the occurrence of the alleged unlawful employment practice, and notice of the charge, including a statement of the date, place, and circumstances of the alleged unlawful employment practice, shall be served upon the person against whom such charge is made within ten days thereafter.

(3) A respondent shall file with the commission a written response to the written charge of violation within thirty days after service upon the respondent. Failure to file a written response within thirty days, except for good cause shown, shall result in a mandatory reasonable cause finding against the respondent by the commission. Failure by any complainant to cooperate with the commission, its investigators, or its staff, except for good cause shown, shall result in dismissal of the complaint by the commission.

(4) In connection with any investigation of a charge filed under this section, the commission or its authorized agents may, at any time after a charge is filed, issue or cause to be served interrogatories and shall have at all reasonable times access to, for the purposes of examination, and the right to copy any evidence or records of any person being investigated or proceeded against that relate to unlawful employment practices covered by the act and are relevant to the charge under investigation. The commission may seek preparation of and judicial enforcement of any legal process or interrogatories through the office of the Attorney General.

Source: Laws 1972, LB 1357, § 6; Laws 1977, LB 162, § 23; Laws 1983, LB 424, § 3; Laws 2007, LB265, § 19.

48-1009 Court; jurisdiction; relief.

In any action brought to enforce the Age Discrimination in Employment Act, the court shall have jurisdiction to grant such legal or equitable relief as the court deems appropriate to effectuate the purposes of the act, including judgments compelling employment, reinstatement, or promotion, or enforcing liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation.

Source: Laws 1972, LB 1357, § 7; Laws 2007, LB265, § 20.

48-1010 Suits against governmental bodies; authorized.

The state, governmental agencies, and political subdivisions may be sued upon claims arising under the Age Discrimination in Employment Act in the same manner as provided by such act for suits against other employers.

Source: Laws 1983, LB 424, § 4; Laws 2007, LB265, § 21.

ARTICLE 12

WAGES

(a) MINIMUM WAGES

Section
48-1203. Wages; minimum rate.
48-1203.01. Training wage; rate; limitations.

(b) SEX DISCRIMINATION

48-1220. Terms, defined.

Section

(c) WAGE PAYMENT AND COLLECTION

(a) MINIMUM WAGES

48-1203 Wages; minimum rate.

(1) Except as otherwise provided in this section and section 48-1203.01, every employer shall pay to each of his or her employees a minimum wage of:

(a) Five dollars and fifteen cents per hour through July 23, 2007;

(b) Five dollars and eighty-five cents per hour on and after July 24, 2007, through July 23, 2008;

(c) Six dollars and fifty-five cents per hour on and after July 24, 2008, through July 23, 2009; and

(d) Seven dollars and twenty-five cents per hour on and after July 24, 2009.

(2) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and thirteen cents per hour, plus all gratuities given to them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the minimum wage rate provided in subsection (1) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.

(3) Any employer employing student-learners as part of a bona fide vocational training program shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum wage rate which would otherwise be applicable.

Source: Laws 1967, c. 285, § 3, p. 775; Laws 1969, c. 408, § 2, p. 1413; Laws 1973, LB 343, § 2; Laws 1987, LB 474, § 1; Laws 1989, LB 412, § 1; Laws 1991, LB 297, § 2; Laws 1997, LB 569, § 1; Laws 2007, LB265, § 22.

48-1203.01 Training wage; rate; limitations.

An employer may pay a new employee who is younger than twenty years of age and is not a seasonal or migrant worker a training wage of at least seventy-five percent of the federal minimum wage for ninety days from the date the new employee was hired. An employer may pay such new employee the training wage rate for an additional ninety-day period while the new employee is participating in on-the-job training which (1) requires technical, personal, or other skills which are necessary for his or her employment and (2) is approved by the Commissioner of Labor. No more than one-fourth of the total hours paid by the employer shall be at the training wage rate.

An employer shall not pay the training wage rate if the hours of any other employee are reduced or if any other employee is laid off and the hours or position to be filled by the new employee is substantially similar to the hours or position of such other employee. An employer shall not dismiss or reduce the hours of any employee with the intention of replacing such employee or his or her hours with a new employee receiving the training wage rate.

Source: Laws 1991, LB 297, § 3; Laws 1997, LB 569, § 2; Laws 2007, LB265, § 23.

(b) SEX DISCRIMINATION

48-1220 Terms, defined.

As used in sections 48-1219 to 48-1227.01, unless the context otherwise requires:

(1) Employee shall mean any individual employed by an employer, including individuals employed by the state or any of its political subdivisions including public bodies;

(2) Employer shall mean any person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, and includes the State of Nebraska, its governmental agencies, and political subdivisions, regardless of the number of employees, but such term shall not include the United States, a corporation wholly owned by the government of the United States, or an Indian tribe;

(3) Wage rate shall mean all compensation for employment including payment in kind and amounts paid by employers for employee benefits as defined by the commission in regulations issued under sections 48-1219 to 48-1227;

(4) Employ shall include to suffer or permit to work;

(5) Commission shall mean the Equal Opportunity Commission; and

(6) Person shall include one or more individuals, partnerships, limited liability companies, corporations, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.

Source: Laws 1969, c. 389, § 2, p. 1366; Laws 1983, LB 424, § 5; Laws 1983, LB 626, § 75; Laws 1993, LB 121, § 299; Laws 2005, LB 10, § 1.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

(c) WAGE PAYMENT AND COLLECTION

48-1228 Act, how cited.

Sections 48-1228 to 48-1232 shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

Source: Laws 1977, LB 220A, § 1; Laws 2007, LB255, § 1.

48-1229 Terms, defined.

For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(2) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(3) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs; and

(4) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

Source: Laws 1977, LB 220A, § 2; Laws 1988, LB 1130, § 1; Laws 1989, LB 238, § 1; Laws 1991, LB 311, § 1; Laws 1993, LB 121, § 300; Laws 1999, LB 753, § 1; Laws 2007, LB255, § 2.

48-1230 Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; itemized statement; duty of employer to furnish; unpaid wages; when due.

(1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee. Thirty days' written notice shall be given to an employee before regular paydays are altered by an employer. An employer may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has written agreement with the employee to deduct, withhold, or divert.

(2) Within ten working days after a written request is made by an employee, an employer shall furnish such employee with an itemized statement listing the wages earned and the deductions made from the employee's wages under subsection (1) of this section for each pay period that earnings and deductions were made. The statement may be in print or electronic format.

(3) Except as otherwise provided in section 48-1230.01:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

Source: Laws 1977, LB 220A, § 3; Laws 1988, LB 1130, § 2; Laws 2007, LB255, § 3; Laws 2010, LB884, § 2.
Effective date July 15, 2010.

48-1230.01 Employer; unpaid wages constituting commissions; duties.

Whenever an employer separates an employee from the payroll, the unpaid wages constituting commissions shall become due on the next regular payday following the employer's receipt of payment for the goods or services from the customer from which the commission was generated. The employer shall provide an employee with a periodic accounting of outstanding commissions until all commissions have been paid or the orders have been returned or canceled by the customer.

Source: Laws 2007, LB255, § 4.

48-1231 Employee; claim for wages; suit; judgment; costs and attorney's fees; failure to furnish itemized statement; penalty.

(1) An employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court. If an employee establishes a claim and secures judgment on the claim, such employee shall be entitled to recover (a) the full amount of the judgment and all costs of such suit and (b) if such employee has employed an attorney in the case, an amount for attorney's fees assessed by the court, which fees shall not be less than twenty-five percent of the unpaid wages. If the cause is taken to an appellate court and the plaintiff recovers a judgment, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court, which fees shall not be less than twenty-five percent of the unpaid wages. If the employee fails to recover a judgment in excess of the amount that may have been tendered within thirty days of the regular payday by an employer, such employee shall not recover the attorney's fees provided by this section. If

the court finds that no reasonable dispute existed as to the fact that wages were owed or as to the amount of such wages, the court may order the employee to pay the employer's attorney's fees and costs of the action as assessed by the court.

(2) An employer who fails to furnish an itemized statement requested by an employee under subsection (2) of section 48-1230 shall be guilty of an infraction as defined in section 29-431 and shall be subject to a fine pursuant to section 29-436.

Source: Laws 1977, LB 220A, § 4; Laws 1991, LB 311, § 2; Laws 2010, LB884, § 3.
Effective date July 15, 2010.

48-1232 Employee; claim; judgment; additional recovery from employer; when.

If an employee establishes a claim and secures judgment on such claim under subsection (1) of section 48-1231: (1) An amount equal to the judgment may be recovered from the employer; or (2) if the nonpayment of wages is found to be willful, an amount equal to two times the amount of unpaid wages shall be recovered from the employer. Any amount recovered pursuant to subdivision (1) or (2) of this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1977, LB 220A, § 5; Laws 1989, LB 238, § 2; Laws 1990, LB 1178, § 1; Laws 2007, LB255, § 5; Laws 2010, LB884, § 4.
Effective date July 15, 2010.

ARTICLE 13

EQUAL OPPORTUNITY FOR DISPLACED HOMEMAKERS

Section
48-1301. Repealed. Laws 2009, LB 549, § 53.
48-1302. Repealed. Laws 2009, LB 549, § 53.
48-1303. Repealed. Laws 2009, LB 549, § 53.
48-1304. Repealed. Laws 2009, LB 549, § 53.
48-1305. Repealed. Laws 2009, LB 549, § 53.
48-1306. Repealed. Laws 2009, LB 549, § 53.
48-1309. Repealed. Laws 2009, LB 549, § 53.

48-1301 Repealed. Laws 2009, LB 549, § 53.

48-1302 Repealed. Laws 2009, LB 549, § 53.

48-1303 Repealed. Laws 2009, LB 549, § 53.

48-1304 Repealed. Laws 2009, LB 549, § 53.

48-1305 Repealed. Laws 2009, LB 549, § 53.

48-1306 Repealed. Laws 2009, LB 549, § 53.

48-1309 Repealed. Laws 2009, LB 549, § 53.

ARTICLE 16
NEBRASKA WORKFORCE INVESTMENT ACT

(b) NEBRASKA WORKFORCE INVESTMENT ACT

(b) NEBRASKA WORKFORCE INVESTMENT ACT

48-1623 Nebraska Workforce Investment Board; members.

(1) The Nebraska Workforce Investment Board is established to assist in the development of a state plan to carry out the functions described in the federal Workforce Investment Act.

(2) The state board shall include:

(a) The Governor;

(b) Two members of the Legislature selected by and serving at the pleasure of the Speaker of the Legislature; and

(c) Members appointed by the Governor who serve at the pleasure of the Governor who are:

(i) Representatives of business in the state who:

(A) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority, including members of local boards described in subdivision (2)(a)(i) of section 48-1620;

(B) Represent businesses with employment opportunities that reflect the employment opportunities of the state; and

(C) Are appointed from among individuals nominated by state business organizations and business trade associations;

(ii) Chief elected officials representing both cities and counties;

(iii) Representatives of labor organizations who have been nominated by state labor federations;

(iv) Representatives of individuals and organizations that have experience with respect to youth programs authorized under section 129 of the federal Workforce Investment Act, 29 U.S.C. 2854;

(v) Representatives of individuals and organizations that have experience and expertise in the delivery of workforce investment activities, including chief executive officers of community colleges and community-based organizations within the state;

(vi)(A) The officials from each of the lead state agencies with responsibility for the programs and activities that are described in section 48-1619 and carried out by one-stop partners; and

(B) In any case in which no lead state agency official has responsibility for such a program, service, or activity, a representative in the state with expertise relating to such program, service, or activity; and

(vii) Such other representatives and state agency officials as the Governor may designate.

(3) The two members of the Legislature serving on the state board shall be nonvoting, ex officio members. All other members shall be voting members. The Governor may designate a representative to participate on his or her behalf in state board committee and general meetings. Such representative shall be entitled to vote on matters brought before the board and shall be considered a member of the board for purposes of determining if a quorum is present.

(4) Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. The members of the board shall represent diverse regions of the state, including urban, rural, and suburban areas.

(5) A majority of the voting members of the state board shall be private sector representatives described in subdivision (2)(c)(i) of this section. The Governor shall select a chairperson and a vice-chairperson for the state board from among the representatives described in such subdivision.

(6) To transact business at all meetings of the state board, a quorum of voting members must be present. A majority of the voting members shall constitute a quorum of the Nebraska Workforce Investment Board.

Source: Laws 2001, LB 193, § 8; Laws 2003, LB 194, § 1; Laws 2008, LB210, § 1.

ARTICLE 18

NEBRASKA AMUSEMENT RIDE ACT

Section
48-1809. Permit fees.
48-1810. Repealed. Laws 2007, LB 265, § 38.

48-1809 Permit fees.

The commissioner shall establish by rules and regulations a schedule of permit fees not to exceed fifty dollars for each amusement ride. Such permit fees shall be established with due regard for the costs of administering the Nebraska Amusement Ride Act and shall be remitted to the State Treasurer for credit to the Mechanical Safety Inspection Fund.

Source: Laws 1987, LB 226, § 9; Laws 2007, LB265, § 25.

48-1810 Repealed. Laws 2007, LB 265, § 38.

ARTICLE 19

DRUG AND ALCOHOL TESTING

Section
48-1902. Terms, defined.

48-1902 Terms, defined.

For purposes of sections 48-1901 to 48-1910, unless the context otherwise requires:

(1) Alcohol means any product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, synthetic ethyl alcohol, the four varieties of liquor, alcohol, spirits, wine, and beer, as defined in sections 53-103.01, 53-103.03, 53-103.38, and 53-103.42, every liquid or

solid, patented or not, containing alcohol, spirits, wine, or beer, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, and toilet preparations;

(2) Breath-testing device means intoxilyzer model 4011AS or other scientific testing equivalent as approved by and operated in accordance with the department rules and regulations;

(3) Breath-testing-device operator means a person who has obtained or been issued a permit pursuant to the department rules and regulations;

(4) Department means the Department of Health and Human Services;

(5) Department rules and regulations means the techniques and methods authorized pursuant to section 60-6,201;

(6) Drug means any substance, chemical, or compound as described, defined, or delineated in sections 28-405 and 28-419 or any metabolite or conjugated form thereof, except that any substance, chemical, or compound containing any product as defined in subdivision (1) of this section may also be defined as alcohol;

(7) Employee means any person who receives any remuneration, commission, bonus, or other form of wages in return for such person's actions which directly or indirectly benefit an employer; and

(8) Employer means the State of Nebraska and its political subdivisions, all other governmental entities, or any individual, association, corporation, or other organization doing business in the State of Nebraska unless it, he, or she employs a total of less than six full-time and part-time employees at any one time.

Source: Laws 1988, LB 582, § 2; Laws 1993, LB 370, § 44; Laws 1994, LB 859, § 1; Laws 1996, LB 1044, § 276; Laws 2007, LB296, § 218; Laws 2010, LB861, § 6.
Effective date July 15, 2010.

ARTICLE 21

CONTRACTOR REGISTRATION

Section

48-2101 Act, how cited.

Sections 48-2101 to 48-2117 shall be known and may be cited as the Contractor Registration Act.

Source: Laws 1994, LB 248, § 1; Laws 2009, LB162, § 1.

48-2102 Legislative intent.

It is the intent of the Legislature that all contractors doing business in Nebraska be registered with the department. It is not the intent of the Legisla-

ture to endorse the quality or performance of services provided by any individual contractor.

Source: Laws 1994, LB 248, § 2; Laws 2008, LB204, § 1.

48-2103 Terms, defined.

For purposes of the Contractor Registration Act:

(1) Commissioner means the Commissioner of Labor;

(2) Construction means work on real property and annexations, including new work, additions, alterations, reconstruction, installations, and repairs performed at one or more different sites which may be dispersed geographically;

(3) Contractor means an individual, firm, partnership, limited liability company, corporation, or other association of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor also includes any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person;

(4) Department means the Department of Labor;

(5) Nonresident contractor means a contractor who neither is domiciled in nor maintains a permanent place of business in this state or who, being so domiciled or maintaining such permanent place of residence, spends in the aggregate less than six months of the year in this state; and

(6) Working days means Mondays through Fridays but does not include Saturdays, Sundays, or federal or state holidays. In computing fifteen working days, the day of receipt of any notice is not included and the last day of the fifteen working days is included.

Source: Laws 1994, LB 248, § 3; Laws 2008, LB204, § 2; Laws 2009, LB162, § 2.

48-2104 Registration required.

(1) Before performing any construction work in Nebraska, a contractor shall be registered with the department. If a contractor does business under more than one name, the contractor shall obtain a registration number for each name under which the contractor is doing business. Any person who performs work or has work performed on his or her own property or any person who earns less than five thousand dollars annually for construction services is not a contractor for purposes of the Contractor Registration Act.

(2) An exemption from the requirements under subsection (1) of this section does not exempt a contractor from withholding requirements under the Nebraska Revenue Act of 1967.

Source: Laws 1994, LB 248, § 4; Laws 2008, LB204, § 3; Laws 2009, LB162, § 3.

Cross References

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

48-2105 Registration; application; contents; renewal.

Each contractor shall apply to the department for a registration number on an application form provided by the department. The application shall contain the following information:

(1) The name and federal employer identification number or, if the applicant is an individual, the social security number of the contractor;

(2) The principal place of business of the contractor in Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the address of the contractor's principal place of business and the name and address of the contractor's registered agent in Nebraska;

(3) The telephone number of the contractor in the State of Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the telephone number of the contractor's principal place of business and the telephone number of the contractor's registered agent in Nebraska;

(4) The type of business entity of the contractor such as corporation, partnership, limited liability company, sole proprietorship, or trust;

(5) The contractor option election to collect and remit sales and use tax on purchases of building materials and fixtures annexed to real property;

(6) The following information about the business entity:

(a) If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation; and

(b) If the contractor is other than a corporation, the name, address, and telephone number of each owner;

(7) Proof of (a) a certificate or policy of insurance written by an insurance carrier duly authorized to do business in this state which gives the effective dates of workers' compensation insurance coverage indicating that it is in force, (b) a certificate evidencing approval of self-insurance privileges as provided by the Nebraska Workers' Compensation Court pursuant to section 48-145, or (c) a signed statement indicating that the contractor is not required to carry workers' compensation insurance pursuant to the Nebraska Workers' Compensation Act; and

(8) A description of the business which includes the employer's standard industrial classification code or the principal products and services provided.

Each application shall be renewed annually upon payment of the fee prescribed in section 48-2107.

Source: Laws 1994, LB 248, § 5; Laws 1997, LB 752, § 129; Laws 2009, LB162, § 4.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2107 Fees; exemption.

(1) Each application or renewal under section 48-2105 shall be signed by the applicant and accompanied by a fee of forty dollars. The commissioner may adopt and promulgate 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 commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established. The fee shall not be required when an amendment to an application is submitted. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the Contractor Registration Cash Fund.

(2) A contractor shall not be required to pay the fee under subsection (1) of this section if (a) the contractor is self-employed and does not pay more than three thousand dollars annually to employ other persons in the business and the application contains a statement made under oath or equivalent affirmation setting forth such information or (b) the contractor only engages in the construction of water wells or installation of septic systems. At any time that a contractor no longer qualifies for exemption from the fee, the fee shall be paid to the department. Any false statement made under subdivision (2)(a) of this section shall be a violation of section 28-915.01.

(3) The commissioner shall charge an additional fee of twenty-five dollars for the registration of each nonresident contractor and a fee of twenty-five dollars for the registration of each contract to which a nonresident contractor is a party if the total contract price or compensation to be received is more than ten thousand dollars. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the General Fund.

Source: Laws 1994, LB 248, § 7; Laws 2008, LB204, § 4; Laws 2009, LB162, § 5.

48-2114 Violation; citation; penalty; legal representation.

(1) The commissioner shall issue a citation to a contractor when an investigation reveals that the contractor has violated:

(a) The requirement that the contractor be registered; or

(b) The requirement that the contractor's registration information be substantially complete and accurate.

(2) When a citation is issued, the commissioner shall notify the contractor of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery. The administrative penalty shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation.

(3) The contractor shall have fifteen working days from the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing pursuant to the Administrative Procedure Act.

(4) If the contractor has never been registered under the Contractor Registration Act, the contractor shall have sixty working days from the date of the citation to register. No administrative penalty shall be assessed if the contractor registers within such sixty-day period. This subsection shall remain in effect until March 1, 2009.

(5) In any civil action to enforce the Contractor Registration Act, the commissioner and the state may be represented by any qualified attorney who

is employed by the commissioner and is designated by him or her for this purpose or at the commissioner's request by the Attorney General.

Source: Laws 1994, LB 248, § 12; Laws 2001, LB 180, § 8; Laws 2008, LB204, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

48-2115 Contractor Registration Cash Fund; created; use; investment.

There is hereby created the Contractor Registration Cash Fund to be administered by the department and used to enforce the Contractor Registration Act and the Employee Classification Act. The fund shall consist of such sums as are appropriated to it by the Legislature and any fees collected in the administration of the acts that are to be credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 248, § 13; Laws 1995, LB 7, § 52; Laws 2008, LB204, § 6; Laws 2009, LB162, § 7; Laws 2010, LB563, § 13. Effective date July 15, 2010.

Cross References

Employee Classification Act, see section 48-2901.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

48-2117 Data base of contractors; removal.

(1) The Department of Labor, in conjunction with the Department of Revenue, shall create a data base of contractors who are registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967. The data base shall be accessible on the web site of the Department of Labor.

(2) Any contractor that fails to comply with the requirements of the Contractor Registration Act or Nebraska Revenue Act of 1967 shall be removed from the data base.

Source: Laws 2009, LB162, § 6.

Cross References

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

ARTICLE 23

NEW HIRE REPORTING ACT

Section
48-2302. Terms, defined.
48-2305. Multistate employer; transmission of reports.
48-2306. Employer; fine.
48-2307. Department; report.

48-2302 Terms, defined.

For purposes of the New Hire Reporting Act:

(1) Date of hire means the day an employee begins employment with an employer;

(2) Department means the Department of Health and Human Services;

(3) Employee means an independent contractor or a person who is compensated by or receives income from an employer or other payor, regardless of how such income is denominated;

(4) Employer means any individual, partnership, limited liability company, firm, corporation, association, political subdivision, or department or agency of the state or federal government, labor organization, or any other entity with an employee;

(5) Income means compensation paid, payable, due, or to be due for labor or personal services, whether denominated as wages, salary, earnings, income, commission, bonus, or otherwise;

(6) Payor includes a person, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other entity doing business or authorized to do business in the State of Nebraska, including a financial institution, or a department or an agency of state, county, or city government; and

(7) Rehire means the first day an employee begins employment with the employer following a termination of employment with such employer. Termination of employment does not include temporary separations from employment, such as an unpaid medical leave, an unpaid leave of absence, a temporary layoff, or an absence for disability or maternity.

Source: Laws 1997, LB 752, § 41; Laws 2009, LB288, § 16.

48-2305 Multistate employer; transmission of reports.

An employer that has employees who are employed in two or more states and that transmits reports magnetically or electronically may comply with the New Hire Reporting Act by designating one of such states in which the employer has employees as the state to which the employer will transmit the report described in section 48-2303. Any Nebraska employer that transmits reports pursuant to this section shall notify the department in writing of the state which such employer designates for the purpose of transmitting reports.

Source: Laws 1997, LB 752, § 44; Laws 2007, LB296, § 219.

48-2306 Employer; fine.

On and after October 1, 1998, the department may levy a fine not to exceed twenty-five dollars for each employee not reported by the employer to the department. The department shall determine whether or not to levy a fine based upon the good faith efforts of an employer to comply with the New Hire Reporting Act. The department shall remit fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1997, LB 752, § 45; Laws 2007, LB296, § 220.

48-2307 Department; report.

The department shall issue a report to the Legislature on or before January 31 of each year which discloses the number of employees reported to the

department and the number of matches during the preceding calendar year for purposes of the New Hire Reporting Act.

Source: Laws 1997, LB 752, § 46; Laws 2007, LB296, § 221.

ARTICLE 25

CONVEYANCE SAFETY ACT

Section

48-2501 Act, how cited.

Sections 48-2501 to 48-2533 shall be known and may be cited as the Conveyance Safety Act.

Source: Laws 2006, LB 489, § 1; Laws 2007, LB265, § 26.

48-2502 Terms, defined.

For purposes of the Conveyance Safety Act:

(1) Certificate of inspection means a document issued by the commissioner that indicates that the conveyance has had the required safety inspection and tests and that the required fees have been paid;

(2) Commissioner means the Commissioner of Labor;

(3) Committee means the Conveyance Advisory Committee;

(4) Conveyance means any elevator, dumbwaiter, vertical reciprocating conveyor, escalator, moving sidewalk, automated people mover, and other equipment enumerated in section 48-2507 and not exempted under section 48-2508;

(5) Elevator contractor means any person who is engaged in the business of contracting services for erecting, constructing, installing, altering, servicing, testing, repairing, or maintaining conveyances;

(6) Elevator mechanic means any person who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining conveyances; and

(7) Person means an individual, a partnership, a limited liability company, a corporation, and any other business firm or company and includes a director, an officer, a member, a manager, and a superintendent of such an entity.

Source: Laws 2006, LB 489, § 2.

48-2503 Conveyance Advisory Committee; created; members; terms; expenses; meetings.

(1) The Conveyance Advisory Committee is created. One member shall be the state elevator inspector appointed pursuant to section 48-2512.01. One member shall be the State Fire Marshal or his or her designee. The Governor shall appoint the remaining members of the committee as follows: One representative from a major elevator manufacturing company; one representative from an elevator servicing company; one representative who is a building manager; one representative who is an elevator mechanic; and one representative of the general public from each county that has a population of more than one hundred thousand inhabitants. The committee shall be appointed within ninety days after January 1, 2008.

(2) The members of the committee appointed by the Governor shall serve for terms of three years, except that of the initial members appointed, two shall serve for terms of one year and three shall serve for terms of two years. The state elevator inspector and the State Fire Marshal or his or her designee shall serve continuously. The appointed members shall be reimbursed for their actual and necessary expenses for service on the committee as provided in sections 81-1174 to 81-1177. The members of the committee shall elect a chairperson who shall be the deciding vote in the event of a tie vote.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet quarterly at a time and place to be fixed by the committee for the consideration of code regulations and for the transaction of such other business as properly comes before it. Special meetings may be called by the chairperson or at the request of two or more

members of the committee. Any appointed committee member absent from three consecutive meetings shall be dismissed.

Source: Laws 2006, LB 489, § 3; Laws 2007, LB265, § 28.

48-2504 Committee; powers and duties.

The committee:

(1) May consult with engineering authorities and organizations concerned with standard safety codes;

(2) Shall recommend to the commissioner rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation, and inspection of conveyances;

(3) Shall recommend to the commissioner qualifications for licensure as an elevator mechanic or elevator contractor and conditions for disciplinary actions, including suspension or revocation of a license;

(4) Shall recommend to the commissioner rules and regulations for temporary and emergency elevator mechanic thirty-day licenses;

(5) Shall recommend to the commissioner an enforcement program which will ensure compliance with the Conveyance Safety Act and the rules and regulations adopted and promulgated pursuant to the act. The enforcement program shall include the identification of property locations which are subject to the act, issuing notifications to violating property owners or operators, random onsite inspections and tests on existing installations, and assisting in development of public awareness programs; and

(6) Shall make recommendations to the commissioner regarding variances under section 48-2509, continuing education providers under section 48-2526, and license disciplinary actions under section 48-2528.

Source: Laws 2006, LB 489, § 4.

48-2505 Repealed. Laws 2007, LB 265, § 38.

48-2506 Commissioner; establish fee schedules; administer act.

(1) The commissioner shall, after a public hearing conducted by the commissioner or his or her designee, establish a reasonable schedule of fees for licenses, permits, certificates, and inspections authorized under the Conveyance Safety Act. The commissioner shall establish the fees at a level necessary to meet the costs of administering the act. Inspection fee schedules relating to the inspection of conveyances adopted by the commissioner prior to January 1, 2008, shall continue to be effective until they are amended or repealed by the commissioner.

(2) The commissioner shall administer the Conveyance Safety Act. It is the intent of the Legislature that, beginning in fiscal year 2008-09, the funding for the administration of the act shall be entirely from cash funds remitted to the Mechanical Safety Inspection Fund that are fees collected in the administration of the act.

Source: Laws 2006, LB 489, § 6; Laws 2007, LB265, § 29.

48-2507 Applicability of act.

(1) The Conveyance Safety Act applies to the construction, operation, inspection, testing, maintenance, alteration, and repair of conveyances. Conveyances include the following equipment, associated parts, and hoistways which are not exempted under section 48-2508:

(a) Hoisting and lowering mechanisms equipped with a car which moves between two or more landings. This equipment includes elevators;

(b) Power driven stairways and walkways for carrying persons between landings. This equipment includes:

(i) Escalators; and

(ii) Moving sidewalks; and

(c) Hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car. This equipment includes:

(i) Dumbwaiters;

(ii) Material lifts and dumbwaiters with automatic transfer devices; and

(iii) Conveyors and related equipment within the scope of American Society of Mechanical Engineers B20.1.

(2) The act applies to the construction, operation, inspection, maintenance, alteration, and repair of automatic guided transit vehicles on guideways with an exclusive right-of-way. This equipment includes automated people movers.

(3) The act applies to conveyances in private residences located in counties that have a population of more than one hundred thousand inhabitants at the time of installation. Such conveyances are subject to inspection at installation but are not subject to periodic inspections.

Source: Laws 2006, LB 489, § 7; Laws 2007, LB265, § 30.

48-2508 Exemptions from act.

The Conveyance Safety Act does not apply to:

(1) Conveyances under the jurisdiction and subject to inspection by the United States Government;

(2) Conveyances used exclusively for agricultural purposes;

(3) Personnel hoists within the scope of American National Standards Institute A10.4;

(4) Material hoists within the scope of American National Standards Institute A10.5;

(5) Manlifts within the scope of American Society of Mechanical Engineers A90.1;

(6) Mobile scaffolds, towers, and platforms within the scope of American National Standards Institute A92;

(7) Powered platforms and equipment for exterior and interior maintenance within the scope of American National Standards Institute 120.1;

(8) Cranes, derricks, hoists, hooks, jacks, and slings within the scope of American Society of Mechanical Engineers B30;

(9) Industrial trucks within the scope of American Society of Mechanical Engineers B56;

(10) Portable equipment, except for portable escalators which are covered by American National Standards Institute A17.1;

(11) Tiering or piling machines used to move materials to and from storage located and operating entirely within one story;

(12) Equipment for feeding or positioning materials at machine tools, printing presses, and similar equipment;

(13) Skip or furnace hoists;

(14) Wharf ramps;

(15) Railroad car lifts or dumpers;

(16) Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing a conveyance by an elevator contractor;

(17) Manlifts, hoists, or conveyances used in grain elevators or feed mills;

(18) Dock levelators;

(19) Stairway chair lifts and platform lifts; and

(20) Conveyances in residences located in counties that have a population of one hundred thousand or less inhabitants.

Source: Laws 2006, LB 489, § 8; Laws 2007, LB265, § 31.

48-2509 Rules and regulations; commissioner; variance authorized; appeal.

(1) The commissioner shall adopt and promulgate rules and regulations which establish the regulations for conveyances under the Conveyance Safety Act. The rules and regulations may include the Safety Code for Elevators and Escalators, American Society of Mechanical Engineers A17.1 except those parts exempted under section 48-2508; the standards for conveyors and related equipment, American Society of Mechanical Engineers B20.1; and the Automated People Mover Standards, American Society of Civil Engineers 21. The commissioner shall annually review to determine if the most current form of such standards should be adopted.

(2) The commissioner may grant a variance from the rules and regulations adopted in subsection (1) of this section in individual situations upon good cause shown if the safety of those riding or using the conveyance is not compromised by the variance. The commissioner shall adopt and promulgate rules and regulations for the procedure to obtain a variance. The committee shall make recommendations to the commissioner regarding each variance requested. The decision of the commissioner in granting or refusing to grant a variance may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2006, LB 489, § 9.

Cross References

Administrative Procedure Act, see section 84-920.

48-2510 Registration of conveyances; when required.

Conveyances upon which construction is started subsequent to January 1, 2008, shall be registered at the time they are completed and placed in service.

Source: Laws 2006, LB 489, § 10.

48-2511 Certificate of inspection; when required; display of certificate.

On and after January 1, 2008: Prior to any newly installed conveyance being used for the first time, the property owner or lessee shall obtain a certificate of inspection from the commissioner. A fee established under section 48-2506 shall be paid for the certificate of inspection. A licensed elevator contractor shall complete and submit first-time registrations for new installations to the state elevator inspector for the inspector's approval. A certificate of inspection shall be clearly displayed in an elevator car and on or in each other conveyance.

Source: Laws 2006, LB 489, § 11.

48-2512 Existing conveyance; prohibited acts; licensed elevator mechanic; licensed elevator contractor; when required; new conveyance installation; requirements.

(1) No person shall wire, alter, replace, remove, or dismantle an existing conveyance contained within a building or structure located in a county that has a population of more than one hundred thousand inhabitants unless such person is a licensed elevator mechanic or he or she is working under the direct supervision of a person who is a licensed elevator mechanic. Neither a licensed elevator mechanic nor a licensed elevator contractor is required to perform nonmechanical maintenance of a conveyance. Neither a licensed elevator contractor nor a licensed elevator mechanic is required for removing or dismantling conveyances which are destroyed as a result of a complete demolition of a secured building.

(2) It shall be the responsibility of licensed elevator mechanics and licensed elevator contractors to ensure that installation and service of a conveyance is performed in compliance with applicable fire and safety codes. It shall be the responsibility of the owner of the conveyance to ensure that the conveyance is maintained in compliance with applicable fire and safety codes.

(3) All new conveyance installations shall be performed by a licensed elevator mechanic under the control of a licensed elevator contractor or by a licensed elevator contractor. Subsequent to installation, a licensed elevator contractor shall certify compliance with the Conveyance Safety Act.

Source: Laws 2006, LB 489, § 12; Laws 2007, LB265, § 32.

48-2512.01 State elevator inspector; qualifications; deputy inspectors; appointment; qualifications.

(1) The Commissioner of Labor shall appoint a state elevator inspector, subject to the approval of the Governor, who shall work under the direct supervision of the commissioner. The state elevator inspector serving on January 1, 2008, shall continue to serve unless removed by the commissioner.

(2) The person so appointed shall be qualified by (a) not less than five years' experience in the installation, maintenance, and repair of elevators as determined by the commissioner, (b) certification as a qualified elevator inspector by an association accredited by the American Society of Mechanical Engineers, or (c) not less than five years' journeyman experience in elevator installation, maintenance, and inspection as determined by the Commissioner of Labor and shall be familiar with the inspection process and rules and regulations adopted and promulgated under the Conveyance Safety Act.

(3) The commissioner, subject to the approval of the Governor, may appoint deputy inspectors possessing the same qualifications as the state elevator inspector. A qualified individual may apply for the position of inspector or deputy inspector. The application shall include the applicant's social security number, but such social security number shall not be a public record.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 14, p. 561; C.S.1922, § 7695; C.S.1929, § 48-414; R.S.1943, § 48-418; Laws 1965, c. 283, § 1, p. 810; Laws 1967, c. 297, § 1, p. 810; Laws 1973, LB 320, § 1; Laws 1982, LB 659, § 2; Laws 1987, LB 36, § 1; Laws 1997, LB 752, § 126; Laws 2006, LB 489, § 35; R.S.Supp.,2006, § 48-418; Laws 2007, LB265, § 27.

48-2513 State elevator inspector; inspections required; written report.

(1) Except as provided otherwise in the Conveyance Safety Act, the state elevator inspector shall inspect or cause to be inspected conveyances which are located in a building or structure, other than a private residence, at least once every twelve months in order to determine whether such conveyances are in a safe and satisfactory condition and are properly constructed and maintained for their intended use.

(2) Subsequent to inspection of a conveyance, the inspector shall supply owners or lessees with a written inspection report describing any and all violations. An owner has thirty days after the date of the published inspection report to correct the violations.

(3) All tests done for the conveyance inspection shall be performed by a licensed elevator mechanic.

Source: Laws 2006, LB 489, § 13.

48-2514 Alternative inspections; requirements.

(1) No inspection shall be required under the Conveyance Safety Act when an owner or user of a conveyance obtains an inspection by a representative of a reputable insurance company licensed to do business in Nebraska, obtains a policy of insurance from such company upon the conveyance and files with the commissioner a certificate of inspection by such insurance company, files a statement that such conveyance is insured, and pays an administrative fee established pursuant to section 48-2506.

(2) No inspection shall be required under the act when there has been an annual inspection under a city ordinance which meets the standards of the act.

Source: Laws 2006, LB 489, § 14.

48-2515 Special inspection; expenses; fee; report.

If at any time the owner or user of a conveyance desires a special inspection of a conveyance, it shall be made by the state elevator inspector after due request therefor and the inspector making the inspection shall collect his or her expenses in connection therewith and a fee established pursuant to section 48-2506. A report of the inspection shall be provided to the owner or user who requested the inspection upon their request.

Source: Laws 2006, LB 489, § 15.

48-2516 Certificate of inspection; issuance; form.

Upon a conveyance passing an inspection under section 48-2513, 48-2514, or 48-2515 and receipt of the inspection fee, the commissioner shall issue the owner or user of the conveyance a certificate of inspection, upon forms prescribed by the commissioner.

Source: Laws 2006, LB 489, § 16.

48-2517 State elevator inspector; records required.

The state elevator inspector shall maintain a complete and accurate record of the name of the owner or user of each conveyance subject to sections 48-2513 and 48-2514 and a full description of the conveyance and the date when last inspected.

Source: Laws 2006, LB 489, § 17.

48-2518 Entry upon property for purpose of inspection.

The commissioner, the state elevator inspector, and the deputy inspectors shall have the right and power to enter any public building or structure for the purpose of inspecting any conveyance subject to the Conveyance Safety Act or gathering information with reference thereto.

Source: Laws 2006, LB 489, § 18.

48-2519 Defective or unsafe condition; notice to owner or user; temporary certificate; when issued.

The state elevator inspector shall notify the owner or user in writing of any conveyance found to be unsafe or unfit for operation setting forth the nature and extent of any defect or other unsafe condition. If the conveyance can be used without making repair or replacement of defective parts or may be used in a limited capacity before repairs or replacements are made, the state elevator inspector may issue a temporary certificate of inspection which shall state the terms and conditions of operation under the temporary certificate. The temporary certificate shall be valid for no longer than thirty days unless an extension is granted by the state elevator inspector for good cause shown.

Source: Laws 2006, LB 489, § 19.

48-2520 Accident involving conveyance; notification required; when; state elevator inspector; duties.

The owner of a conveyance shall notify the state elevator inspector of any accident causing personal injury or property damage in excess of one thousand dollars involving a conveyance on or before the close of business the next business day following the accident, and the conveyance involved shall not operate until the state elevator inspector has conducted an investigation of the accident and has approved the operation of the conveyance. The state elevator inspector shall investigate and report to the commissioner the cause of any conveyance accident that may occur in the state, the loss of life, the injuries sustained, and such other data as may be of benefit in preventing other similar accidents.

Source: Laws 2006, LB 489, § 20.

48-2521 Elevator mechanic license; elevator contractor license; application; form; contents.

(1) Any person wishing to engage in the work of an elevator mechanic shall apply for and obtain an elevator mechanic license from the commissioner. The application shall be on a form provided by the commissioner.

(2) Any person wishing to engage in the business of an elevator contractor shall apply for and obtain an elevator contractor license from the commissioner. The application shall be on a form provided by the commissioner.

(3) Each application shall contain:

(a) If an individual, the name, residence and business address, and social security number of the applicant;

(b) If a partnership, the name, residence and business address, and social security number of each partner;

(c) If a domestic corporation, the name and business address of the corporation and the name, residence address, and social security number of the principal officer of the corporation; and if a corporation other than a domestic corporation, the name and address of an agent located locally who is authorized to accept service of process and official notices;

(d) The number of years the applicant has engaged in the business of installing, inspecting, maintaining, or servicing conveyances;

(e) The approximate number of individuals to be employed by the applicant and, if applicable, satisfactory evidence that the employees are or will be covered by workers' compensation insurance;

(f) Satisfactory evidence that the applicant is or will be covered by general liability, personal injury, and property damage insurance;

(g) Permission for the Department of Labor to access the criminal history record information of individuals, partners, or officers maintained by the Federal Bureau of Investigation through the Nebraska State Patrol;

(h) A description of all accidents causing personal injury or property damage in excess of one thousand dollars involving conveyances installed, inspected, maintained, or serviced by the applicant; and

(i) Such other information as the commissioner may by rule and regulation require.

(4) Social security numbers on applications shall not be made public or be considered a part of a public record.

Source: Laws 2006, LB 489, § 21.

48-2522 Standards for licensure of elevator mechanics; commissioner; duties.

The commissioner shall adopt and promulgate rules and regulations establishing standards for licensure of elevator mechanics. An applicant for an elevator mechanic license shall demonstrate the following qualifications before being granted an elevator mechanic license:

(1) Not less than three years' work experience in the conveyance industry, in construction, maintenance, and service or repair, as verified by current and previous employers;

(2) One of the following:

(a) Satisfactory completion of a written examination administered by the committee on the most recent referenced codes and standards;

(b) Acceptable proof that the applicant has worked as a conveyance constructor, maintenance, or repair person. Such person shall have worked as an elevator mechanic without the direct and immediate supervision of a licensed elevator contractor and have passed a written examination approved by the commissioner. This employment shall not be less than three years immediately prior to the effective date of the license;

(c) Certificates of completion and successfully passing an elevator mechanic examination of a nationally recognized training program for the conveyance industry as provided by the National Elevator Industry Educational Program or its equivalent; or

(d) Certificates of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of the Conveyance Safety Act and registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or a state apprenticeship council; and

(3) Any additional qualifications adopted and promulgated in rule and regulation by the commissioner.

Source: Laws 2006, LB 489, § 22.

48-2523 Elevator contractor license; work experience required.

An applicant for an elevator contractor license shall demonstrate five years' work experience in the conveyance industry in construction, maintenance, and service or repair, as verified by current or previous employers.

Source: Laws 2006, LB 489, § 23.

48-2524 Reciprocity.

Upon application, an elevator mechanic license or an elevator contractor license may be issued to a person holding a valid license from a state having standards substantially equal to those of the Conveyance Safety Act.

Source: Laws 2006, LB 489, § 24.

48-2525 License; issuance; renewal.

Upon approval of an application for licensure as an elevator mechanic, the commissioner may issue a license which shall be renewable biennially if the continuing education requirements are met. The fee for licenses and for license renewal for elevator mechanic licenses and elevator contractor licenses shall be set by the commissioner under section 48-2506.

Source: Laws 2006, LB 489, § 25.

48-2526 Continuing education; extension; when granted; approved providers; records.

(1) The renewal of elevator mechanic licenses granted under the Conveyance Safety Act shall be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education on new and existing rules and regulations adopted and promulgated by the commissioner. Such course shall consist of not less than eight hours of instruction that shall be attended and completed within one year immediately preceding any license renewal. The individual holding the elevator mechanic license shall pay the cost of such course.

(2) The courses shall be taught by instructors through continuing education providers that may include association seminars and labor training programs. The committee shall make recommendations to the commissioner about approval of continuing education providers.

(3) An elevator mechanic licensee who is unable to complete the continuing education course required under this section prior to the expiration of the license due to a temporary disability may apply for an extension from the state elevator inspector. The extension shall be on a form provided by the state elevator inspector which shall be signed by the applicant and accompanied by a certified statement from a competent physician attesting to such temporary disability. Upon the termination of such temporary disability, the elevator mechanic licensee shall submit to the state elevator inspector a certified statement from the same physician, if practicable, attesting to the termination of such temporary disability. At such time an extension sticker, valid for ninety days, shall be issued to the licensed elevator mechanic and affixed to the license. Such extension shall be renewable for periods of ninety days upon a showing that the disability continues.

(4) Approved continuing education providers shall keep uniform records, for a period of ten years, of attendance of elevator mechanic licensees following a format approved by the state elevator inspector, and such records shall be available for inspection by the state elevator inspector upon request. Approved continuing education providers are responsible for the security of all attendance records and certificates of completion. Falsifying or knowingly allowing another to falsify such attendance records or certificates of completion shall constitute grounds for suspension or revocation of the approval required under this section.

Source: Laws 2006, LB 489, § 26.

48-2527 Insurance policy; requirements; delivery; notice of alteration or cancellation.

(1) An elevator contractor shall submit to the commissioner an insurance policy, or certified copy thereof, issued by an insurance company authorized to do business in the state to provide general liability coverage of at least one million dollars for injury or death of any one person and one million dollars for injury or death of any number of persons in any one occurrence and to provide coverage of at least five hundred thousand dollars for property damage in any one occurrence and workers' compensation insurance coverage as required under the Nebraska Workers' Compensation Act.

(2) Such policies, or certified copies thereof, shall be delivered to the commissioner before or at the time of the issuance of a license. In the event of any material alteration or cancellation of any policy, at least ten days' notice thereof shall be given to the commissioner.

Source: Laws 2006, LB 489, § 27.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2528 Elevator contractor license; revocation; grounds; elevator mechanic license; disciplinary actions; grounds; procedure; decision; appeal.

(1) An elevator contractor license issued under the Conveyance Safety Act may be revoked by the commissioner upon verification that the elevator contractor licensee lacks the insurance coverage required by section 48-2527.

(2) An elevator mechanic license or an elevator contractor license issued under the act may be suspended, revoked, or subject to a civil penalty not to exceed five thousand dollars by the commissioner, after notice and hearing, if the licensee:

(a) Makes a false statement as to material matter in the license application;

(b) Commits fraud, misrepresentation, or bribery in obtaining the license; or

(c) Violates any other provision of the act.

(3) No license shall be suspended, revoked, or subject to civil penalty until after a hearing is held before the committee and the commissioner or his or her designee. The hearing shall be held within sixty days after notice of the violation is received and all interested parties shall receive written notice of the hearing at least fifteen days prior to the hearing. Within fifteen days after the hearing, the committee shall make recommendations to the commissioner or his or her designee of appropriate penalties, if any, warranted under the circumstances of the case. The committee does not have the power to suspend or revoke licenses or impose civil penalties. Within thirty days after the hearing, the commissioner shall issue a decision which may include license suspension, license revocation, and civil penalties. The decision of the commissioner may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2006, LB 489, § 28.

Cross References

Administrative Procedure Act, see section 84-920.

48-2529 Temporary and emergency elevator mechanic thirty-day licenses.

The commissioner shall adopt and promulgate rules and regulations establishing standards and procedures for the issuance of temporary and emergency elevator mechanic thirty-day licenses and for the extension of such licenses for good cause shown.

Source: Laws 2006, LB 489, § 29.

48-2530 Request for investigation of alleged violation; preliminary inquiry; formal investigation; procedure.

(1) Any person may make a request for an investigation into an alleged violation of the Conveyance Safety Act by giving notice to the commissioner or state elevator inspector of such violation or danger.

(2) Upon receipt of a request for an investigation, the commissioner or state elevator inspector shall perform a preliminary inquiry into the charges contained in the request for investigation. A request for an investigation may be made in person or by telephone call and shall set forth with reasonable particularity the grounds for the request for an investigation. During the preliminary inquiry, the name, address, and telephone number of the person making the request for an investigation shall be available only to the commissioner, state elevator inspector, or other person carrying out the preliminary inquiry on behalf of the commissioner or state elevator inspector. The commis-

sioner or state elevator inspector shall keep a record of each request for an investigation received under this section for three years after such request is made.

(3) If after the preliminary inquiry the commissioner or state elevator inspector determines that there are reasonable grounds to believe that such violation or danger exists and is likely to continue to exist such that the operation of the conveyance endangers the public, the commissioner or state elevator inspector shall cause a formal investigation to be made. During the formal investigation, a statement shall be taken from the person who made the request for an investigation and the person's name, address, and telephone number shall be made available to any opposing parties upon request.

(4) If the commissioner or state elevator inspector determines that there are no reasonable grounds to believe that a violation or danger exists under either subsection (2) or (3) of this section, the commissioner shall notify the person requesting the investigation in writing of such determination.

Source: Laws 2006, LB 489, § 30.

48-2531 Act; how construed; liability.

The Conveyance Safety Act shall not be construed to relieve or lessen the responsibility or liability of any person owning, operating, controlling, maintaining, erecting, constructing, installing, altering, testing, or repairing any conveyance covered by the act for damages to person or property caused by any defect therein. By administering the Conveyance Safety Act, the state and its officers and employees assume no liability for accidents involving a conveyance.

Source: Laws 2006, LB 489, § 31.

48-2532 Compliance with code at time of installation; notification of dangerous condition.

Under the Conveyance Safety Act, conveyances shall be required to comply with the code standards applicable at the time such conveyance was or is installed. However, if, upon the inspection of any conveyance, (1) the conveyance is found to be in a dangerous condition or there is an immediate hazard to those using such conveyance or (2) the design or the method of operation in combination with devices used is considered inherently dangerous in the opinion of the state elevator inspector, the state elevator inspector shall notify the owner of the conveyance of such condition and shall order such alterations or additions as may be deemed necessary to eliminate the dangerous condition.

Source: Laws 2006, LB 489, § 32.

48-2533 Violations; penalty.

(1) Any person who knowingly violates the Conveyance Safety Act is guilty of a Class V misdemeanor. Each violation shall be a separate offense.

(2) Any person who installs a conveyance in violation of the Conveyance Safety Act is guilty of a Class II misdemeanor.

Source: Laws 2006, LB 489, § 33.

ARTICLE 26

NEBRASKA UNIFORM ATHLETE AGENTS ACT

Section

48-2601 Act, how cited.

Sections 48-2601 to 48-2619 shall be known and may be cited as the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 1.

48-2602 Terms, defined.

In the Nebraska Uniform Athlete Agents Act:

(1) Agency contract means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract;

(2) Athlete agent means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

(3) Athletic director means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

(4) Contact means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;

(5) Endorsement contract means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

(6) Intercollegiate sport means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

(7) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(8) Professional-sports-services contract means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;

(9) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(10) Registration means registration as an athlete agent pursuant to the act;

(11) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

(12) Student-athlete means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

Source: Laws 2009, LB292, § 2.

48-2603 Service of process; subpoenas.

(1) By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

(2) The Secretary of State may issue subpoenas for any material that is relevant to the administration of the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 3.

48-2604 Athlete agent; registration required; void contracts.

(1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section 48-2606 or 48-2608.

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract if:

(a) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract.

Source: Laws 2009, LB292, § 4.

48-2605 Registration as athlete agent; form; requirements.

(1) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (2) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(a) The name of the applicant and the address of the applicant's principal place of business;

(b) The name of the applicant's business or employer, if applicable;

(c) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(d) A description of the applicant's:

(i) Formal training as an athlete agent;

(ii) Practical experience as an athlete agent; and

(iii) Educational background relating to the applicant's activities as an athlete agent;

(e) The names and addresses of three individuals not related to the applicant who are willing to serve as references;

(f) The name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(g) The names and addresses of all persons who are:

(i) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

(ii) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;

(h) Whether the applicant or any person named pursuant to subdivision (g) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subdivision (g) of this subsection has made a false, misleading, deceptive, or fraudulent representation;

(j) Any instance in which the conduct of the applicant or any person named pursuant to subdivision (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or an educational institution;

(k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subdivision (g) of this subsection arising out of occupational or professional conduct; and

(l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subdivision (g) of this subsection as an athlete agent in any state.

(2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (1) of this section. The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) Was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(b) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(c) Was signed by the applicant under penalty of perjury.

Source: Laws 2009, LB292, § 5.

48-2606 Certificate of registration; issuance or denial; renewal.

(1) Except as otherwise provided in subsection (2) of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with subsection (1) of section 48-2605 or whose application has been accepted under subsection (2) of section 48-2605.

(2) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

(a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) Engaged in conduct prohibited by section 48-2614;

(e) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(f) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or an educational institution; or

(g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under subsection (2) of this section, the Secretary of State shall consider:

(a) How recently the conduct occurred;

(b) The nature of the conduct and the context in which it occurred; and

(c) Any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (4) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Secretary of State shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(a) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(c) Was signed by the applicant under penalty of perjury.

(6) A certificate of registration or a renewal of a registration is valid for two years.

Source: Laws 2009, LB292, § 6.

48-2607 Suspension, revocation, or refusal to renew registration.

(1) The Secretary of State may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under subsection (2) of section 48-2606.

(2) The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The Administrative Procedure Act applies to the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

48-2608 Temporary registration.

The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Source: Laws 2009, LB292, § 8.

48-2609 Registration and renewal fees.

(1) An application for registration or renewal of registration must be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(2) The Secretary of State may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to cover the costs of administering the Nebraska Uniform Athlete Agents Act, in the event any such fees are required. Such fees shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the Secretary of State Administration Cash Fund.

Source: Laws 2009, LB292, § 9.

48-2610 Required form of contract.

(1) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(2) An agency contract must state or contain:

(a) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) A description of any expenses that the student-athlete agrees to reimburse;

(d) A description of the services to be provided to the student-athlete;

(e) The duration of the contract; and

(f) The date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

Source: Laws 2009, LB292, § 10.

48-2611 Notice to educational institution.

(1) Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(2) Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

Source: Laws 2009, LB292, § 11.

48-2612 Student-athlete's right to cancel.

(1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.

(2) A student-athlete may not waive the right to cancel an agency contract.

(3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

Source: Laws 2009, LB292, § 12.

48-2613 Required records.

(1) An athlete agent shall retain the following records for a period of five years:

(a) The name and address of each individual represented by the athlete agent;

(b) Any agency contract entered into by the athlete agent; and

(c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(2) Records required by subsection (1) of this section to be retained are open to inspection by the Secretary of State during normal business hours.

Source: Laws 2009, LB292, § 13.

48-2614 Prohibited conduct.

(1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

(a) Give any materially false or misleading information or make a materially false promise or representation;

(b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent may not intentionally:

(a) Initiate contact with a student-athlete unless registered under the Nebraska Uniform Athlete Agents Act;

(b) Refuse or fail to retain or permit inspection of the records required to be retained by section 48-2613;

(c) Fail to register when required by section 48-2604;

(d) Provide materially false or misleading information in an application for registration or renewal of registration;

(e) Predate or postdate an agency contract; or

(f) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

Source: Laws 2009, LB292, § 14.

48-2615 Criminal penalty.

An athlete agent who violates section 48-2614 is guilty of a Class I misdemeanor.

Source: Laws 2009, LB292, § 15.

48-2616 Civil remedies.

(1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of the Nebraska Uniform Athlete Agents Act. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(2) Damages of an educational institution under subsection (1) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or a former student-athlete, the educational institution was injured by a violation of the act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(5) The act does not restrict rights, remedies, or defenses of any person under law or equity.

Source: Laws 2009, LB292, § 16.

48-2617 Administrative penalty.

The Secretary of State may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 17.

48-2618 Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2009, LB292, § 18.

48-2619 Electronic Signatures in Global and National Commerce Act.

The provisions of the Nebraska Uniform Athlete Agents Act governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229, 114 Stat. 464 (2000), as such act existed on January 1, 2009, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

Source: Laws 2009, LB292, § 19.

ARTICLE 27

PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION ACT

Section

48-2701 Act, how cited.

Sections 48-2701 to 48-2711 shall be known and may be cited as the Professional Employer Organization Registration Act.

Source: Laws 2010, LB579, § 1.
Operative date January 1, 2012.

48-2702 Terms, defined.

For purposes of the Professional Employer Organization Registration Act:

(1) Client means any person who enters into a professional employer agreement with a professional employer organization;

(2) Co-employer means either a professional employer organization or a client;

(3) Co-employment relationship means a relationship which is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between the client employer and a professional employer organization as co-employers pursuant to a professional employer agreement and the act. In such a co-employment relationship:

(a) The professional employer organization is entitled to enforce only such employer rights and is subject to only those employer obligations specifically allocated to the professional employer organization by the professional employer agreement or the act;

(b) The client is entitled to enforce those rights and is obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement or the act; and

(c) The client is entitled to enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer agreement or the act;

(4) Covered employee means an individual having a co-employment relationship with a professional employer organization and a client who meets all of the following criteria: (a) The individual has received written notice of co-employment with the professional employer organization; and (b) the individual's co-employment relationship is pursuant to a professional employer agreement subject to the act. Individuals who are officers, directors, shareholders, partners, and managers of the client or who are members of a limited liability company if such company is the client are covered employees to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals are covered employees, if such individuals meet the criteria of this subdivision and act as operational managers or perform day-to-day operational services for the client;

(5) Department means the Department of Labor;

(6) Direct-hire employee means an individual who is an employee of the professional employer organization within the meaning of the Nebraska Workers' Compensation Act and who is not an employee of a client and who is not a covered employee;

(7) Master policy means a workers' compensation insurance policy issued to a professional employer organization that provides coverage for more than one client and may provide coverage to the professional employer organization with respect to its direct-hire employees or that provides coverage for one client in addition to the professional employer organization's direct-hire employees. Two or more clients insured under the same policy solely because they are under common ownership are considered a single client for purposes of this subdivision;

(8) Multiple coordinated policy means a workers' compensation insurance policy that provides coverage for only a single client or group of clients under common ownership but with payment obligations and certain policy communications coordinated through the professional employer organization;

(9) Person means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity;

(10) Professional employer agreement means a written contract by and between a client and a professional employer organization that provides:

(a) For the co-employment of covered employees;

(b) For the allocation of employer rights and obligations between the client and the professional employer organization with respect to covered employees; and

(c) That the professional employer organization and the client assume the responsibilities required by the Professional Employer Organization Registration Act;

(11)(a) Professional employer organization means any person engaged in the business of providing professional employer services. The applicability of the act to a person engaged in the business of providing professional employer services shall be unaffected by the person's use of the term staff leasing company, administrative employer, employee leasing company, or any name other than professional employer organization or PEO.

(b) The following are not professional employer organizations or professional employment services for purposes of the act:

(i) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and which does not hold itself out as a professional employer organization, shares employees with a commonly owned company within the meaning of sections 414(b) and (c) of the Internal Revenue Code;

(ii) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by such person or his or her agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements; and

(iii) Providing temporary help services;

(12) Professional employer organization group means two or more professional employer organizations that are majority-owned or commonly controlled by the same entity, parent company, or controlling person;

(13) Professional employer services means the service of entering into co-employment relationships;

(14) Registrant means a professional employer organization registered under the act;

(15) Temporary help services means services consisting of a person:

(a) Recruiting and hiring its own employees;

(b) Finding other organizations that need the services of those employees;

(c) Assigning those employees (i) to perform work at or services for the other organizations to support or supplement the other organizations' workforces, (ii) to provide assistance in special work situations, including employee absences,

skill shortages, or seasonal workloads, or (iii) to perform special assignments or projects; and

(d) Customarily attempting to reassign the employees to other organizations when they finish each assignment; and

(16) Working capital means current assets less current liabilities as defined by generally accepted accounting principles.

Source: Laws 2010, LB579, § 2.
Operative date January 1, 2012.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2703 Act; professional employer agreement; effect on rights or obligations; other requirements applicable; client rights and status.

(1) Nothing contained in the Professional Employer Organization Registration Act or in any professional employer agreement shall affect, modify, or amend any collective-bargaining agreement or the rights or obligations of any client, professional employer organization, or covered employee under the federal National Labor Relations Act, 29 U.S.C. 151 et seq., or the federal Railway Labor Act, 45 U.S.C. 151 et seq.

(2)(a) Nothing contained in the Professional Employer Organization Registration Act or any professional employer agreement shall:

(i) Diminish, abolish, or remove rights of covered employees as to a client or obligations of such client to a covered employee existing prior to the effective date of the professional employer agreement;

(ii) Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective, nor prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee. A professional employer organization shall have no responsibility or liability in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant unless the professional employer organization has specifically agreed otherwise in writing;

(iii) Create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or the act; or

(iv) Diminish, abolish, or remove rights of covered employees as to a client or obligations of a client to covered employees, including, but not limited to, rights and obligations arising from civil rights laws guaranteeing nondiscrimination in employment practices. A co-employer shall, immediately after receipt of such notice, notify the other co-employer of such receipt and shall transmit a copy of the notice to the other co-employer within ten business days after such receipt.

(b)(i) Nothing contained in the act or any professional employer agreement shall affect, modify, or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

(ii) A covered employee who is required to be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any such license, registration, or certification requirement.

(c) A professional employer organization shall not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity, solely by entering into and maintaining a co-employment relationship with a covered employee who is subject to such licensing, registration, or certification requirements.

(d) A client shall have the sole right to direct and control the professional or licensed activities of covered employees and of the client's business. Such covered employees and clients shall remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration, or certification of such covered employees or clients.

(3) With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client company has entered into a professional employer agreement with a professional employer organization or uses the services of a professional employer organization.

Source: Laws 2010, LB579, § 3.
Operative date January 1, 2012.

48-2704 Registration required; restrictions on use of names or title; application; contents; initial registration; when required; limited registration application; interim operating permit; registration renewal; limited registration; eligibility; department; maintain list of registrants; department; powers and duties; confidentiality.

(1) A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered under the Professional Employer Organization Registration Act.

(2) A person who is not registered under the Professional Employer Organization Registration Act shall not offer or provide professional employer services in this state and shall not use the names PEO, professional employer organization, staff leasing company, employee leasing company, administrative employer, or any other name or title representing professional employer services.

(3) Each applicant for registration under the act shall provide the department with the following information:

(a) The name or names under which the professional employer organization conducts business;

(b) The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state;

(c) The professional employer organization's taxpayer or employer identification number;

(d) A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities;

(e) A statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-

five percent or more of the equity interest of the professional employer organization;

(f) A statement of management, which shall include the name and evidence of the business experience of any individual who serves as president or chief executive officer or otherwise has the authority to act as senior executive officer of the professional employer organization; and

(g) A financial statement setting forth the financial condition of the professional employer organization or professional employer organization group. At the time of initial registration, the applicant shall submit the most recent audit of the applicant, which audit may not be older than thirteen months. Thereafter, a professional employer organization or professional employer organization group shall file on an annual basis, within one hundred eighty days after the end of the professional employer organization's fiscal year, a succeeding audit. An applicant may apply for an extension with the department, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date.

The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located and shall be without qualification as to the going concern status of the professional employer organization. A professional employer organization group may submit combined or consolidated financial statements to meet the requirements of this section. A professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least twelve months of operating history shall meet the financial responsibility requirements of section 48-2705 and present financial statements reviewed by a certified public accountant.

(4)(a) Each professional employer organization operating within this state as of January 1, 2012, shall complete its initial registration not later than one hundred eighty days after January 1, 2012. Such initial registration shall be valid until one hundred eighty days from the end of the professional employer organization's first fiscal year that is more than one year after January 1, 2012.

(b) Each professional employer organization not operating within this state as of January 1, 2012, shall complete its initial registration prior to initiating operations within this state. If a professional employer organization not registered in this state becomes aware that an existing client not based in this state has employees and operations in this state, the professional employer organization shall either decline to provide professional employer services for those employees or notify the department within five business days of its knowledge of this fact and file a limited registration application under subsection (7) of this section or a full registration if there are more than fifty covered employees. The department may issue an interim operating permit for the period the registration application is pending if the professional employer organization is currently registered or licensed by another state and the department determines it to be in the best interests of the potential covered employees.

(5) Within one hundred eighty days after the end of a registrant's fiscal year, such registrant shall renew its registration by notifying the department of any changes in the information provided in such registrant's most recent registration or renewal. A registrant's existing registration shall remain in effect during the pendency of a renewal application.

(6) Professional employer organizations in a professional employer organization group may satisfy any reporting and financial requirements of the Professional Employer Organization Registration Act on a combined or consolidated basis if each member of the professional employer organization group guarantees the financial capacity obligations under the act of each other member of the professional employer organization group. If a professional employer organization group submits a combined or consolidated audited financial statement including entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organizations in the professional employer organization group.

(7)(a) A professional employer organization is eligible for a limited registration under the act if such professional employer organization:

(i) Submits a properly executed request for limited registration on a form provided by the department;

(ii) Is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

(iii) Does not maintain an office in this state or directly solicit clients located or domiciled within this state; and

(iv) Does not have more than fifty covered employees employed or domiciled in this state on any given day.

(b) A limited registration is valid for one year and may be renewed.

(c) A professional employer organization seeking limited registration under this section shall provide the department with information and documentation necessary to show that the professional employer organization qualifies for a limited registration.

(d) Section 48-2705 does not apply to applicants for limited registration.

(8) The department shall maintain a list of professional employer organizations registered under the act that is readily available to the public by electronic or other means.

(9) The department may prescribe forms necessary to promote the efficient administration of this section.

(10) The department shall, to the extent practical, permit by rule and regulation the acceptance of electronic filings, including applications, documents, reports, and other filings required by the department. Such rule and regulation may provide for the acceptance of electronic filings and other assurance by an independent and qualified entity approved by the department that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the requirements of this section and section 48-2705. Such rule and regulation shall permit a professional employer organization to authorize the entity approved by the department to act on the professional employer organization's behalf in complying with the registration requirements of the act, including electronic filings of information and payment of registration fees. Use of such an approved entity shall be optional and not mandatory for a registrant. Nothing in this subsection shall limit or change the department's authority to register or terminate registration of a professional employer organization or to investigate or enforce any provision of the act.

(11) All records, reports, and other information obtained from a professional employer organization under the act, except to the extent necessary for the proper administration of the act by the department, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

Source: Laws 2010, LB579, § 4.
Operative date January 1, 2012.

48-2705 Financial commitment required; filing with department.

(1) Except as provided in subsections (7) and (10) of section 48-2704, each professional employer organization or professional employer organization group shall have either:

(a) Positive working capital of at least one hundred thousand dollars at the time of initial registration and each renewal thereafter as reflected in the financial statements submitted to the department with the initial registration and each annual renewal; or

(b)(i) If the positive working capital of the professional employer organization is less than one hundred thousand dollars, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount of not less than one hundred thousand dollars; or

(ii) If the financial statement submitted to the department indicates a deficit in working capital, a bond, certificate of deposit, escrow account, or irrevocable letter of credit in an amount that is not less than one hundred thousand dollars plus an amount that is sufficient to cover that deficit.

(2) The commitment described in subdivision (1)(b) of this section shall be in a form approved by the department, shall be held in a depository designated by the department, and shall secure the payment by the professional employer organization or professional employer organization group of any wages, salaries, employee benefits, worker's compensation insurance premiums, payroll taxes, unemployment insurance contributions, or other amounts that are payable to or with respect to an employee performing services for a client if the professional employer organization or professional employer organization group does not make those payments when due. The commitment shall be established in favor of or be made payable to the department, for the benefit of the state and any employee to whom or with respect to whom the professional employer organization or professional employer organization group does not make a payment described in this subsection when due. The professional employer organization or professional employer organization group shall file with the department any agreement, instrument, or other document that is necessary to enforce the commitment against the professional employer organization or professional employer organization group, against any relevant third party, or both.

Source: Laws 2010, LB579, § 5.
Operative date January 1, 2012.

48-2706 Co-employment relationship; restrictions; rights and obligations; professional employer agreement; contents; written notice to employee; posting of notice; responsibilities of client; liability; sales tax liability; health benefit plan.

(1) No person shall knowingly enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(2) Except as specifically provided in the Professional Employer Organization Registration Act or in the professional employer agreement, in each co-employment relationship:

(a) The client shall be entitled to exercise all rights and shall be obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship;

(b) The professional employer organization shall be entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required by the act or in the professional employer agreement. The rights, duties, and obligations of the professional employer organization as co-employer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and the act during the term of co-employment by the professional employer organization of such covered employee; and

(c) Unless otherwise expressly agreed by the professional employer organization and the client in a professional employer agreement, the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities, or to comply with any licensure requirements applicable to the client or to the covered employees.

(3) Except as specifically provided in the Professional Employer Organization Registration Act, the co-employment relationship between the client and the professional employer organization, and between each co-employer and each covered employee, shall be governed by the professional employer agreement. Each professional employer agreement shall include the following:

(a) The allocation of rights, duties, and obligations as described in this section;

(b) A provision that the professional employer organization shall have responsibility to pay wages to covered employees; to withhold, collect, report, and remit payroll-related and unemployment taxes; and, to the extent the professional employer organization has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees. For purposes of this section, wages does not include any obligation between a client and a covered employee for payments beyond or in addition to the covered employee's salary, draw, or regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off pay, unless the professional employer organization has expressly agreed to assume liability for such payments in the professional employer agreement;

(c) A provision that the professional employer organization shall have a right to hire, discipline, and terminate a covered employee as may be necessary to fulfill the professional employer organization's responsibilities under the act and the professional employer agreement. The client shall have a right to hire, discipline, and terminate a covered employee; and

(d) A provision that the responsibility to obtain workers' compensation coverage for covered employees and for other employees of the client from an insurer licensed to do business in this state and otherwise in compliance with all applicable requirements shall be specified in the professional employer agreement in accordance with section 48-2709. The client shall not be relieved of its obligations under the Nebraska Workers' Compensation Act to provide workers' compensation coverage in the event that the professional employer organization fails to obtain workers' compensation insurance for which it has assumed responsibility.

(4) With respect to each professional employer agreement entered into by a professional employer organization, such professional employer organization shall provide written notice to each covered employee affected by such agreement. The professional employer organization shall provide, and the client shall post in a conspicuous place at the client's worksite, the following:

(a) Notice of the general nature of the co-employment relationship between and among the professional employer organization, the client, and any covered employees; and

(b) Any notice required by the state relating to unemployment compensation and the minimum wage.

(5) Except to the extent otherwise expressly provided by the applicable professional employer agreement:

(a) A client shall be solely responsible for the quality, adequacy, or safety of the goods or services produced or sold in the client's business;

(b) A client shall be solely responsible for (i) directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client or when such employees are otherwise acting under the express direction and control of the client and (ii) the acts, errors, or omissions of the covered employees with regard to such activities or when such employees are otherwise acting under the express direction and control of the client;

(c) A client shall not be liable for the acts, errors, or omissions of a professional employer organization or of any covered employee of the client and a professional employer organization when such covered employee is acting under the express direction and control of the professional employer organization;

(d) Nothing in this subsection shall limit any contractual liability or obligation specifically provided in a professional employer agreement; and

(e) A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included for such purposes by specific reference in the professional employer agreement and in any applicable prearranged employment contract, insurance contract, or bond.

(6) When a professional employer organization obtains workers' compensation coverage for its clients that is written by an authorized insurer, it shall not be considered to be an insurer based on its provision of workers' compensation insurance coverage to a client, even if the professional employer organization

charges the client a different amount than it is charged by the authorized insurer.

(7) For purposes of this state or any county, municipality, or other political subdivision thereof:

(a) Covered employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. Nothing contained in the Professional Employer Organization Registration Act shall relieve a client of any sales tax liability with respect to its goods or services;

(b) Any tax or assessment imposed upon professional employer services or any business license or other fee which is based upon gross receipts shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement;

(c) Any tax assessed or assessment or mandated expenditure on a per capita or per employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees co-employed with a client. Any benefit or monetary consideration that meets the requirements of mandates imposed on a client and that is received by covered employees through the professional employer organization either through payroll or through benefit plans sponsored by the professional employer organization shall be credited against the client's obligation to fulfill such mandates; and

(d) In the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the professional employer organization shall be eligible to apply any small business allowance or exemption available to the client for the covered employees for the purpose of computing the tax.

(8) A professional employer organization shall not offer its covered employees any health benefit plan which is not fully insured by an authorized insurer.

Source: Laws 2010, LB579, § 6.
Operative date January 1, 2012.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2707 Funds; records.

Any funds held by the professional employer organization in a fiduciary capacity shall be recorded separately and held in a fiduciary capacity on behalf of each client. The professional employer organization shall keep copies of all the records pertaining to such deposits and withdrawals and, upon request of a client, shall furnish the client with an accounting and copies of the records.

Source: Laws 2010, LB579, § 7.
Operative date January 1, 2012.

48-2708 Retirement and employee welfare benefit plans.

(1) A client and a professional employer organization shall each be deemed an employer under the laws of this state for purposes of sponsoring retirement and employee welfare benefit plans for its covered employees.

(2) A fully insured employee welfare benefit plan offered to the covered employees of a single professional employer organization shall be for purposes of state law a single employee welfare benefit plan and shall not be considered a multiple employer welfare arrangement, as defined in section 44-7603, and shall be exempt from the registration requirements of the Multiple Employer Welfare Arrangement Act.

(3) For purposes of the Small Employer Health Insurance Availability Act, a professional employer organization shall be considered the employer of all of its covered employees and all covered employees of any client participating in a health benefit plan sponsored by a single professional employer organization shall be considered employees of the professional employer organization. Subject to any eligibility requirements imposed by the plan or policy, the insurer shall accept and insure all employees of the client and all beneficiaries of those employees.

Source: Laws 2010, LB579, § 8.
Operative date January 1, 2012.

Cross References

Multiple Employer Welfare Arrangement Act, see section 44-7601.
Small Employer Health Insurance Availability Act, see section 44-5223.

48-2709 Workers' compensation coverage; allocation of responsibility; information to administrator of Nebraska Workers' Compensation Court; notice; posting; contents; notice of cancellation, nonrenewal, or termination; rights of client.

(1) The responsibility to obtain workers' compensation coverage for employees covered by the professional employer agreement and for other employees of the client shall be allocated in the professional employer agreement to the client, the professional employer organization, or both, in accordance with this section. If any such responsibility is allocated to the professional employer organization, the professional employer organization shall:

(a) Advise the client of the provisions of subdivisions (9) and (10) of section 48-115;

(b) Advise the client of its obligation to obtain an additional workers' compensation insurance policy if the professional employer organization's policy limits coverage to co-employees as specified in the professional employer agreement; and

(c) Provide the client with the name of the insurer providing coverage, the policy number, claim notification instructions, and any itemized charges that are to be made for workers' compensation coverage within ten days after enrollment.

(2)(a) If all employees of the client are not covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client may be written to limit coverage to those employees who are co-employees of the professional employer organization and the client. If a professional employer organization's policy limits coverage to co-employees as

specified in the professional employer agreement, then the client shall obtain an additional workers' compensation insurance policy. The policy obtained by the client shall be written to cover any and all employees not covered by the professional employer organization's policy, including any potential new or unknown employees. All insurance policies issued pursuant to this subsection shall be subject to and shall comply with the requirements of this subsection and any rule or regulation adopted by the Department of Insurance.

(b) If all employees of the client are covered employees under the professional employer agreement, then a workers' compensation insurance policy obtained by the professional employer organization to cover employees of the client must be written to cover any and all employees of the client, including potential new or unknown employees that may not be covered employees under the agreement.

(c) A professional employer organization shall not split coverage that it obtains for a client between two or more policies.

(d) A professional employer organization shall not split coverage for its direct-hire employees between two or more policies.

(e) The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.

(3) If the professional employer agreement allocates responsibility to the professional employer organization to obtain workers' compensation coverage only for co-employees, then the professional employer organization shall provide the following information to the administrator of the Nebraska Workers' Compensation Court. Such information shall be provided for any such professional employer agreement in effect on January 1, 2012, and prior to the effective date of any new professional employer agreement or any amendment of an agreement adding such a provision after January 1, 2012, and shall be provided in a form and manner prescribed by the administrator:

(a) The names and addresses of the client and the professional employer organization;

(b) The effective date of the professional employer agreement;

(c) A description of the employees covered under the professional employer agreement;

(d) Evidence that any and all other employees of the client are covered by a valid workers' compensation insurance policy; and

(e) Any other information the administrator may require regarding workers' compensation coverage of the professional employer organization, the client, or the covered employees.

(4) If workers' compensation coverage for a client's employees covered by the professional employer agreement and for other employees of the client is not entirely available in the voluntary market, then assigned risk workers' compensation coverage written subject to section 44-3,158 may only be written on a single policy that covers all employees and co-employees of the client. Assigned risk workers' compensation insurance for the professional employer organization may also be written, but only on a basis that covers its direct-hire employees and excludes employees and co-employees of its clients. The Department of Insurance may adopt and promulgate rules and regulations to implement this subsection.

(5) If a master policy or multiple coordinated policy providing coverage to a client is obtained by a professional employer organization, then the professional employer organization shall provide the client with a notice that the client shall conspicuously post at its workplace. Such notice shall provide the name and address of the workers' compensation insurer and the individual to whom claims shall be directed. If more than one workers' compensation insurer provides coverage for employees and co-employees of the client, the client shall post such information for all such workers' compensation insurers.

(6) Both the client and the professional employer organization shall be considered the employer for purposes of coverage under the Nebraska Workers' Compensation Act. The protection of the exclusive remedy provision of the act shall apply to the professional employer organization, to the client, and to all covered employees and other employees of the client regardless of which co-employer obtains such workers' compensation coverage.

(7) If a client receives notice of the cancellation, nonrenewal, or termination of workers' compensation coverage obtained by the professional employer organization, then the client may withdraw from the professional employer agreement without penalty unless the client is notified by the professional employer organization of replacement coverage within fifteen days after the notice.

(8) A professional employer organization shall not impose any fee increase on a client based on the actual or anticipated cost of workers' compensation coverage without giving the client at least thirty days' advance notice and an opportunity to withdraw from the professional employer agreement without penalty.

(9) The professional employer organization shall not make any materially inaccurate, misleading, or fraudulent representations to the client regarding the cost of workers' compensation coverage. If the professional employer organization charges the client an itemized amount for workers' compensation coverage, the professional employer organization shall provide the client with an accurate and concise description of the basis upon which it was calculated and the services that are included. A professional employer organization shall not charge a client an itemized amount for workers' compensation coverage that is materially inconsistent with the actual amounts that the professional employer organization is charged by the insurer, given reasonably anticipated loss-sensitive charges, if applicable, reasonable recognition of the professional employer organization's costs, and a margin for profit.

Source: Laws 2010, LB579, § 9.
Operative date January 1, 2012.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2710 Fees; Professional Employer Organization Cash Fund; created; use; investment.

(1) The department shall adopt a schedule of fees for initial registration, annual registration renewal, and limited registration, not to exceed two thousand five hundred dollars for initial registration, one thousand five hundred dollars for annual registration renewal, and one thousand dollars for limited registration. Such fees shall not exceed those reasonably necessary for the administration of the Professional Employer Organization Registration Act.

(2) There is hereby created the Professional Employer Organization Cash Fund to be administered by the department. Fees imposed pursuant to this section shall be remitted to the State Treasurer for credit to the fund. Money in the fund may be used for the administration of the Professional Employer Organization Registration 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 2010, LB579, § 10.
Operative date January 1, 2012.

Cross References

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

48-2711 Prohibited acts; violation; penalty; disciplinary action; powers of department; rules and regulations.

(1)(a) A person shall not knowingly:

(i) Offer or provide professional employer services in this state or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer, or other title representing professional employer services unless such person is registered under the Professional Employer Organization Registration Act;

(ii) Provide false or fraudulent information to the department in conjunction with any registration, renewal, or report required under the act; or

(iii) Enter into a co-employment relationship in which less than a majority of the employees of the client in this state are covered employees or in which less than one-half of the payroll of the client in this state is attributable to covered employees.

(b) Any person violating this subsection is guilty of a Class I misdemeanor.

(2) Disciplinary action may be taken by the department:

(a) Against a person for violation of subsection (1) of this section;

(b) Against a professional employer organization or a controlling person of a professional employer organization upon the conviction of a professional employer organization or a controlling person of a professional employer organization of a crime that relates to the operation of the professional employer organization or the ability of a registrant or a controlling person of a registrant to operate a professional employer organization;

(c) Against a professional employer organization or a controlling person of a professional employer organization for knowingly making a material misrepresentation to an insurer, an insurance producer, the department, or other governmental agency; or

(d) Against a professional employer organization or a controlling person of a professional employer organization for a willful violation of the act or any order or regulation issued by the department under the act.

(3)(a) Upon finding, after notice and opportunity for hearing, that a professional employer organization, a controlling person of a professional employer organization, or a person offering professional employer services has violated one or more provisions of this section, and subject to any appeal required, the department may:

(i) Deny an application for registration;

(ii) Revoke, restrict, or refuse to renew a registration;

(iii) Impose an administrative penalty in an amount not to exceed one thousand dollars for each material violation;

(iv) Place the registrant on probation for the period and subject to conditions that the department specifies; or

(v) Issue a cease and desist order.

(b) A decision by the department under this subsection may be appealed in accordance with the Administrative Procedure Act.

(4) The department may adopt and promulgate rules and regulations reasonably necessary for the administration and enforcement of this section and sections 48-2704, 48-2705, and 48-2710.

Source: Laws 2010, LB579, § 11.
Operative date January 1, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 28
NEBRASKA INNOVATION AND HIGH WAGE EMPLOYMENT ACT

Section
48-2801. Act, how cited.
48-2802. Innovation and Entrepreneurship Task Force; created; members; statewide strategic plan; contents.
48-2803. Statewide strategic plan; development; nonprofit organization.
48-2804. Statewide strategic plan; preparation and presentation to Legislature.
48-2805. Act, termination.

48-2801 Act, how cited.

Sections 48-2801 to 48-2805 shall be known and may be cited as the Nebraska Innovation and High Wage Employment Act.

Source: Laws 2010, LB1109, § 1.
Effective date April 13, 2010.
Termination date January 1, 2011.

48-2802 Innovation and Entrepreneurship Task Force; created; members; statewide strategic plan; contents.

The Legislature recognizes the importance of innovation and high wage employment and the role that innovation plays in the economic well-being of the state. The Innovation and Entrepreneurship Task Force is created. The Executive Board of the Legislative Council shall appoint six members of the Legislature to the task force. The executive board shall appoint one of such members as chairperson and one as vice-chairperson. The task force shall develop a statewide strategic plan to cultivate a climate of entrepreneurship that results in innovation and high wage employment. The task force shall adopt policy criteria to be used in the development of the plan. The plan shall include an inventory of current state and locally sponsored programs and resources targeted to small businesses, microenterprises, and entrepreneurial endeavors in the state. The plan shall provide an overview of best practices

from other states, including, but not limited to, an examination of economic gardening and angel investor programs, and provide policy options.

Source: Laws 2010, LB1109, § 2.
Effective date April 13, 2010.
Termination date January 1, 2011.

48-2803 Statewide strategic plan; development; nonprofit organization.

The Innovation and Entrepreneurship Task Force, in consultation with the Executive Board of the Legislative Council, shall commission a nonprofit organization to provide research, analysis, and recommendations for the development of the statewide strategic plan. The nonprofit organization shall be incorporated pursuant to the Nebraska Nonprofit Corporation Act, shall be organized exclusively for nonprofit purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, shall be engaged in activities to facilitate and promote the growth of potential high-growth businesses within the state, and shall be dedicated to the development and growth of the entrepreneurial economy. It is the intent of the Legislature that forty-eight thousand dollars of General Funds be appropriated to the Legislative Council to provide funding for the Nebraska Innovation and High Wage Employment Act.

Source: Laws 2010, LB1109, § 3.
Effective date April 13, 2010.
Termination date January 1, 2011.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

48-2804 Statewide strategic plan; preparation and presentation to Legislature.

The Innovation and Entrepreneurship Task Force shall prepare and present the statewide strategic plan to the Legislature by December 1, 2010.

Source: Laws 2010, LB1109, § 4.
Effective date April 13, 2010.
Termination date January 1, 2011.

48-2805 Act, termination.

The Nebraska Innovation and High Wage Employment Act terminates on January 1, 2011.

Source: Laws 2010, LB1109, § 5.
Effective date April 13, 2010.
Termination date January 1, 2011.

ARTICLE 29

EMPLOYEE CLASSIFICATION ACT

Section

Section
48-2907. Fines.
48-2908. Action to collect unpaid combined taxes plus interest; additional investigation and enforcement action.
48-2909. Report; contents.
48-2910. Contractor; post notice.
48-2911. Contracts; affidavit required; rescission.
48-2912. Contractor; false affidavit; penalties.

48-2901 Act, how cited.

Sections 48-2901 to 48-2912 shall be known and may be cited as the Employee Classification Act.

Source: Laws 2010, LB563, § 1.
Effective date July 15, 2010.

48-2902 Terms, defined.

For purposes of the Employee Classification Act:

(1) Commissioner means the Commissioner of Labor;

(2) Construction has the same meaning as in section 48-2103;

(3) Contractor means an individual, partnership, limited liability company, corporation, or other business entity engaged in a delivery service or a construction contractor business, as contractor is defined in section 48-2103, and includes any subcontractor performing services for a contractor;

(4) Delivery service means the transport and delivery of goods, products, supplies, or raw materials upon the highways of this state;

(5) Department means the Department of Labor; and

(6) Performing services means the performance of construction labor or delivery services for remuneration.

Source: Laws 2010, LB563, § 2.
Effective date July 15, 2010.

48-2903 Presumption; act; how construed.

(1) An individual performing construction labor services for a contractor is presumed an employee and not an independent contractor for purposes of the Employee Classification Act, unless:

(a) The individual meets the criteria found in subdivision (5) of section 48-604;

(b) The individual has been registered as a contractor pursuant to the Contractor Registration Act prior to commencing construction work for the contractor; and

(c) The individual has been assigned a combined tax rate pursuant to subdivision (4) of section 48-649 or is exempted from unemployment insurance coverage pursuant to subdivision (6) of section 48-604.

(2) An individual performing delivery services for a contractor is presumed an employee and not an independent contractor for purposes of the Employee Classification Act, unless the individual meets the criteria found in subdivision (5) of section 48-604 or is exempted from unemployment insurance coverage pursuant to subdivision (6) of section 48-604.

(3) The Employee Classification Act shall not be construed to affect or apply to a common-law or statutory action providing for recovery in tort and shall not be construed to affect or change the common-law interpretation of independent contractor status as it relates to tort liability or a workers' compensation claim. The act shall also not be construed to affect or alter the use of the term independent contractor as interpreted by the Department of Revenue and shall not be construed to affect any action brought pursuant to the Nebraska Revenue Act of 1967.

Source: Laws 2010, LB563, § 3.
Effective date July 15, 2010.

Cross References

Contractor Registration Act, see section 48-2101.
Nebraska Revenue Act of 1967, see section 77-2701.

48-2904 Violation.

It is a violation of the Employee Classification Act for a contractor to designate an individual as an independent contractor who would be properly classified as an employee under section 48-2903.

Source: Laws 2010, LB563, § 4.
Effective date July 15, 2010.

48-2905 Reports of suspected violations; department; duties; confidentiality.

The department shall establish and operate a hotline and web site for individuals to report suspected violations of the Employee Classification Act. The hotline and web site may be operated in conjunction with the requirements of the Contractor Registration Act. At a minimum, the department shall require the reporting individual to provide contact information and a description of the suspected violation including the name of the business and job site location. Except to the extent needed in any administrative hearing, civil action, or criminal proceeding brought to enforce the Employment Security Law, Nebraska Revenue Act of 1967, or Nebraska Workers' Compensation Act, information obtained by the department under this section or obtained from any individual pursuant to the administration of the Employee Classification Act shall be held confidential.

Source: Laws 2010, LB563, § 5.
Effective date July 15, 2010.

Cross References

Contractor Registration Act, see section 48-2101.
Employment Security Law, see section 48-601.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Workers' Compensation Act, see section 48-1,110.

48-2906 Investigations.

The department shall timely investigate all credible reports made pursuant to section 48-2905.

Source: Laws 2010, LB563, § 6.
Effective date July 15, 2010.

48-2907 Fines.

In addition to any other fines or penalties provided by law, if the commissioner finds, after notice and hearing, that a contractor has violated the Employee Classification Act, the contractor shall be assessed, by the commissioner, a five-hundred-dollar fine per each misclassified individual for the first offense and a five-thousand-dollar fine per each misclassified individual for each second and subsequent offense.

Source: Laws 2010, LB563, § 7.
Effective date July 15, 2010.

48-2908 Action to collect unpaid combined taxes plus interest; additional investigation and enforcement action.

Upon finding a contractor has violated the Employee Classification Act, the commissioner shall instigate proceedings pursuant to the Employment Security Law to collect any unpaid combined taxes plus interest. The commissioner shall share any violations with the Department of Revenue for analysis of violations of the Nebraska Revenue Act of 1967 and with the Nebraska Workers' Compensation Court. Upon receipt, the Department of Revenue shall promptly investigate and, if appropriate, proceed with the collection of any income tax not withheld plus interest and penalties. The commissioner, Department of Revenue, and Nebraska Workers' Compensation Court shall refer any violation reasonably believed to be a civil or criminal violation of the Employment Security Law, the Nebraska Revenue Act of 1967, the Nebraska Workers' Compensation Act, or another law to the appropriate prosecuting authority for appropriate action.

Source: Laws 2010, LB563, § 8.
Effective date July 15, 2010.

Cross References

Contractor Registration Act, see section 48-2101.
Employment Security Law, see section 48-601.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Workers' Compensation Act, see section 48-1,110.

48-2909 Report; contents.

The department shall annually provide a report to the Legislature regarding compliance with and enforcement of the Employee Classification Act. The report shall include, but not be limited to, the number of reports received from both its hotline and web site, the number of investigated reports, the findings of the reports, the amount of combined tax, interest, and fines collected, the number of referrals to the Department of Revenue, Nebraska Workers' Compensation Court, and appropriate prosecuting authority, and the outcome of such referrals.

Source: Laws 2010, LB563, § 9.
Effective date July 15, 2010.

48-2910 Contractor; post notice.

Every contractor shall post in a conspicuous place at the job site or place of business in English and Spanish the following notice:

(1) Every individual working for a contractor has the right to be properly classified by the contractor as an employee rather than an independent contrac-

tor if the individual does not meet the requirements of an independent contractor under the law known as the Employee Classification Act.

(2) If you believe you or someone else has not been properly classified as an employee or an independent contractor under the Employee Classification Act, contact the Department of Labor.

Source: Laws 2010, LB563, § 10.
Effective date July 15, 2010.

48-2911 Contracts; affidavit required; rescission.

Any contract between the state or a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the state or political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with section 4-114, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to section 48-2912. Such contract shall also require that the contractor follow the provisions of the Employee Classification Act. A violation of the act by a contractor is grounds for rescission of the contract by the state or political subdivision.

Source: Laws 2010, LB563, § 11.
Effective date July 15, 2010.

48-2912 Contractor; false affidavit; penalties.

Any contractor who knowingly provides a false affidavit under section 48-2911 to the state or political subdivision shall be subject to the penalties of perjury and upon a second or subsequent violation shall be barred from contracting with the state or any political subdivision for a period of three years after the date of discovery of the falsehood.

Source: Laws 2010, LB563, § 12.
Effective date July 15, 2010.

Cross References

Perjury, penalty, see section 28-915.

ARTICLE 30

TELEWORKER JOB CREATION ACT

Section

Section
48-3008. Department of Economic Development; audit employer.
48-3009. Right to reimbursement and agreement under act; not transferable; exception.
48-3010. Job training reimbursements; interest not allowed.
48-3011. No preclusion from receiving tax incentives or other benefits.

48-3001 Act, how cited.

Sections 48-3001 to 48-3011 shall be known and may be cited as the Teleworker Job Creation Act.

Source: Laws 2010, LB1081, § 1.
Effective date April 8, 2010.

48-3002 Legislative findings and declarations.

The Legislature hereby finds and declares that:

(1) Current economic conditions in the state have resulted in unemployment, loss of jobs, and difficulty in attracting new jobs; and

(2) It is the policy of the state to make revisions in Nebraska's job training structure to encourage businesses to promote the creation of and training for new jobs which can be performed in the home within the state.

Source: Laws 2010, LB1081, § 2.
Effective date April 8, 2010.

48-3003 Terms, defined.

For purposes of the Teleworker Job Creation Act:

(1) Application filing date means the date that the employer files an application for an agreement with the director under the act;

(2) Base year means the three hundred sixty-five days immediately preceding the application filing date;

(3) Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the employer or its predecessors during the base year and who is employed at the project;

(4) Director means the Director of Economic Development;

(5) Employer means a corporation, partnership, limited liability company, cooperative, limited cooperative association, or joint venture, together with such other entities that are, or would be if incorporated, members of the same unitary group as defined in section 77-2734.04, that employs the teleworkers for which the job training reimbursements are applied for under the act;

(6) Qualified training program means a training program which has the following features: (a) The program has at least fifteen hours of instruction per trainee, all of which will occur in the trainee's residence; (b) trainees are each paid at least the federal minimum hourly wage per hour of training performed; (c) trainees are being trained as teleworkers; and (d) the program requires the trainees to pass job-related tests established by the employer;

(7) Qualifying employee means a teleworker who has the following characteristics: (a) The teleworker constitutes an employee of the employer under section 77-2753; (b) the teleworker resides in Nebraska at the time of his or her employment application according to his or her statement on his or her

employment application; (c) the teleworker completes a qualified training program; (d) the teleworker is not a base-year employee; (e) the teleworker is not required to purchase a computer from the employer; (f) the teleworker has passed such job-related tests required under the qualified training program; (g) the teleworker has passed a criminal background check as required by the employer; and (h) the teleworker has been allowed to complete the hiring process paperwork from his or her residence, except for any drug testing and notarized proof of identity, which can be performed at such location directed by the employer; and

(8) Teleworker means a person who works for the employer from his or her residence through the use of telecommunication systems, such as the telephone and the Internet, for inbound-only service and order-taking sales calls, which calls may also include the upselling of related products or services.

Source: Laws 2010, LB1081, § 3.
Effective date April 8, 2010.

48-3004 Job training reimbursements; application; contents; confidentiality; director; duties; written agreement; contents.

(1) To earn the job training reimbursements set forth in the Teleworker Job Creation Act, an employer shall file an application for an agreement with the director. An application may be filed at any time on or after April 8, 2010.

(2) The application shall contain:

(a) A written statement describing the expected employment of qualifying employees in this state;

(b) Sufficient documents, plans, and specifications as required by the director to support the plan and to define a project; and

(c) A copy of the letter submitted to the director seeking approval of the employer's qualified training program.

(3) The application and all supporting information shall be confidential except, for each project:

(a) The name of the employer;

(b) The amount of the job training reimbursement;

(c) The number of persons trained, with such number divided into three categories: The number who reside in rural areas; the number who reside in poverty areas; and the number who reside in all other parts of Nebraska, based on the rural areas and poverty areas described in section 48-3006; and

(d) The amount of total wages and other payments subject to withholding, as defined in section 77-2753, paid by the employer to all teleworkers who reside in Nebraska, with such residence as determined by the statement of the qualifying employee on his or her employment application, within three hundred sixty-five days prior to the date of application, for the year of the project, and for the following twelve months.

The employer shall be required to provide this information to the director upon written request by the director.

(4)(a) The director shall approve the application and authorize the total amount of job training reimbursements expected to be earned as a result of the project if he or she is satisfied that (i) the plan in the application defines a project that meets the eligibility requirements established within the Teleworker

Job Creation Act and (ii) such requirements will be reached within three hundred sixty-five calendar days after the application filing date. The director shall use the subaccount created under subsection (3) of section 81-1201.21 to provide reimbursements allowed by the act for the training of teleworkers.

(b) The director shall not approve further applications once the director has approved seven project applications filed before the end of fiscal year 2010-11 and the expected job training reimbursements from the approved projects total one million fifty thousand dollars in fiscal year 2010-11. Applications for an agreement shall for purposes of this limit be approved in the order in which they are received by the director.

(c) An employer and the director may enter into agreements for more than one project, up to a total of five approved project applications filed before the end of fiscal year 2010-11. The projects may be either sequential or concurrent. No new qualifying employees shall be included in more than one project for meeting the project requirements or the creation of job training reimbursements. When projects overlap and the plans do not clearly specify, the employer shall specify to which project the employment belongs. The employer has until it submits its request for reimbursement to the director to designate to which project a qualifying employee belongs. The employer may not receive job training reimbursements for a qualifying employee until the employer designates to which project that qualifying employee belongs. Such designation shall be made on such form to be filed with the director as the director shall direct.

(5) After approval, the employer and the director shall enter into a written agreement. The employer shall agree to complete the project, and the director, on behalf of the State of Nebraska, shall designate the approved plans of the employer as a project and, in consideration of the employer's agreement, agree to allow the employer to receive the job training reimbursements contained in the Teleworker Job Creation Act up to the total amount of job training reimbursements that were authorized by the director. The application and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The number of qualifying employees 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 employer will need to supply when requesting the job training reimbursements under the act;

(d) The date the application was filed; and

(e) The maximum amount of job training reimbursements authorized.

Source: Laws 2010, LB1081, § 4.
Effective date April 8, 2010.

48-3005 Employer; submit description of training program.

(1) To be eligible to file an application for an agreement with the director under the Teleworker Job Creation Act, the employer shall submit a description of its training program to the director for review.

(2) If the employer's training program meets the requirements to constitute a qualified training program under the act, the director shall approve such program and provide the employer with an approval letter.

Source: Laws 2010, LB1081, § 5.
Effective date April 8, 2010.

48-3006 Job training reimbursements; employer; requirements; amount of reimbursements.

(1) Job training reimbursements shall be made to any employer who has an approved application pursuant to the Teleworker Job Creation Act and who trains at least four hundred qualifying employees in a qualified training program within three hundred sixty-five calendar days from the application filing date and offers employment to those qualifying employees to work for the employer as a teleworker. The employer shall, to the extent of available job positions, give a hiring priority preference, over other similarly qualified applicants, to those applicants who (a) reside in Nebraska counties of less than one hundred thousand inhabitants, as determined by the most recent federal decennial census, with such residence as determined by the statement of the qualifying employee on his or her employment application, or (b) reside 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. Such job positions shall pay a wage of at least the then-required minimum hourly wage required by federal law. If the employer fails to provide such a hiring priority preference to one or more of the persons entitled to it, then the employer shall lose the right to one job training reimbursement for each such failure.

(2) The amount of the job training reimbursements allowed under subsection (1) of this section shall be three hundred dollars for each new qualifying employee hired by the employer after the application filing date, up to a total of five hundred qualifying employees per project, resulting in a maximum reimbursement per project of one hundred fifty thousand dollars.

Source: Laws 2010, LB1081, § 6.
Effective date April 8, 2010.

48-3007 Request; form; contents.

A request for job training reimbursements may be filed annually or quarterly by the employer on a form required by the director. Each request shall contain verification of the number of qualifying employees, designated by project, for which the employer has met the requirements of the Teleworker Job Creation Act, and such amounts shall be paid to the employer upon approval by the director.

Source: Laws 2010, LB1081, § 7.
Effective date April 8, 2010.

48-3008 Department of Economic Development; audit employer.

The Department of Economic Development shall, prior to making the job training reimbursement, audit the employer for compliance with the Teleworker Job Creation Act. The department may utilize the subaccount created under subsection (3) of section 81-1201.21 to support the costs of audits and administration of the Teleworker Job Creation Act.

Source: Laws 2010, LB1081, § 8.
Effective date April 8, 2010.

48-3009 Right to reimbursement and agreement under act; not transferable; exception.

(1) The right to job training reimbursements and the agreement under the Teleworker Job Creation Act shall not be transferable except when a project covered by an agreement is transferred by sale or lease to another employer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986.

(2) The acquiring employer, as of the date of notification of the director of the completed transfer, shall be entitled to any unused job training reimbursements and to any future job training reimbursements allowable under the act.

Source: Laws 2010, LB1081, § 9.
Effective date April 8, 2010.

48-3010 Job training reimbursements; interest not allowed.

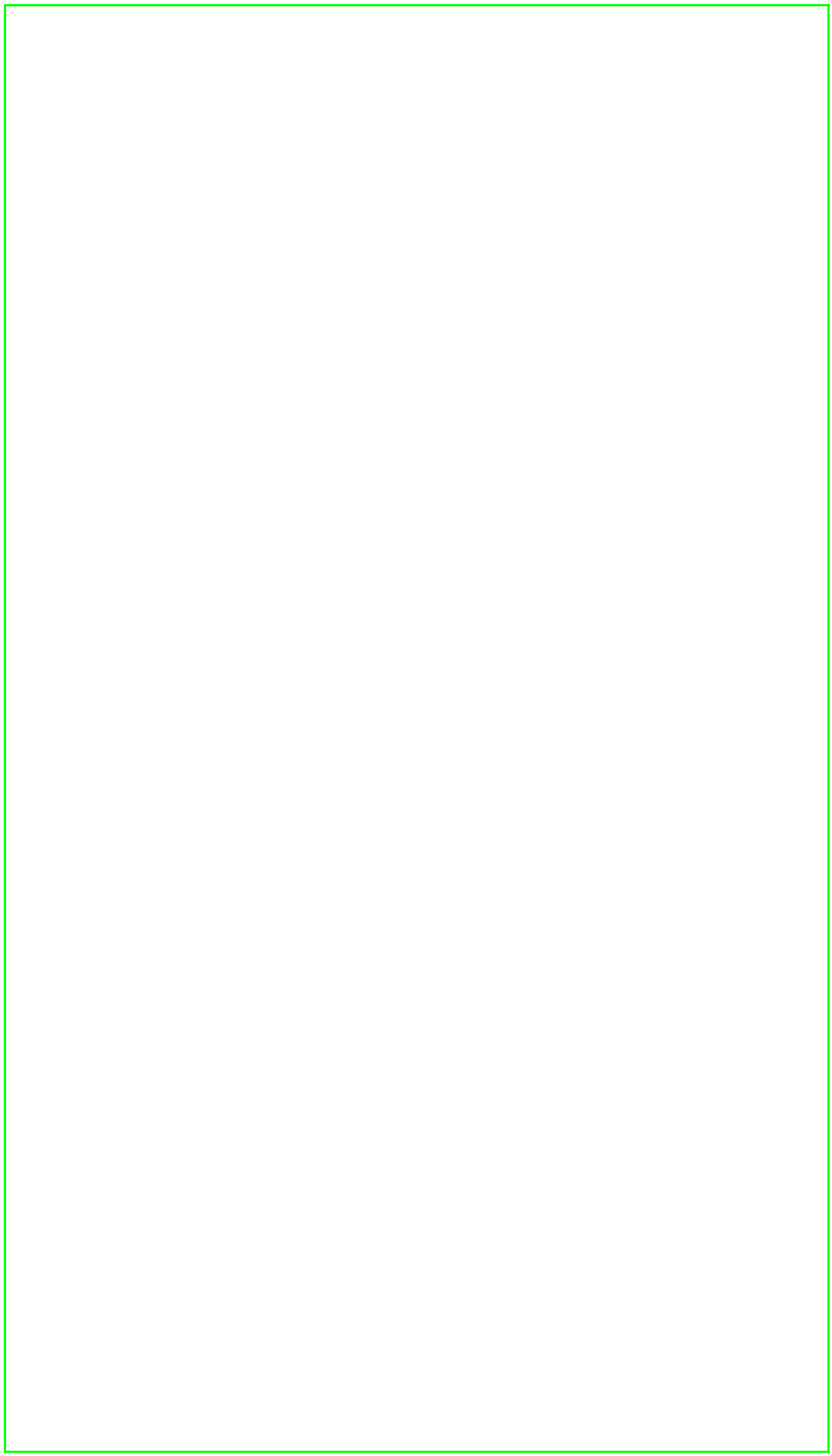
Interest shall not be allowable on any job training reimbursements earned under the Teleworker Job Creation Act.

Source: Laws 2010, LB1081, § 10.
Effective date April 8, 2010.

48-3011 No preclusion from receiving tax incentives or other benefits.

Participation in the Teleworker Job Creation Act shall not preclude an employer from receiving tax incentives or other benefits under other federal, state, or local incentive programs.

Source: Laws 2010, LB1081, § 11.
Effective date April 8, 2010.



CHAPTER 49
LAW

Article.
5. Publication and Distribution of Session Laws and Journals. 49-501.01 to 49-508.
6. Printing and Distribution of Statutes. 49-617.
8. Definitions, Construction, and Citation. 49-801 to 49-807.
14. Nebraska Political Accountability and Disclosure Act.
(a) General Provisions. 49-1401 to 49-1434.
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(e) Nebraska Accountability and Disclosure Commission. 49-14,112 to 49-14,140.
15. Nebraska Short Form Act. 49-1501, 49-1562.

ARTICLE 5

PUBLICATION AND DISTRIBUTION OF SESSION LAWS AND JOURNALS

Section
49-501.01. Session laws and journal; Clerk of the Legislature; compile; contents.
49-506. Distribution by Secretary of State.
49-508. Distribution to new members of Legislature.

49-501.01 Session laws and journal; Clerk of the Legislature; compile; contents.

The session laws and journal of the Legislature shall be compiled and published by the Clerk of the Legislature after each regular session of the Legislature. The session laws and journal may be published in print or electronic format or in both formats. The session laws shall contain all the laws passed by the preceding session as well as those passed during any special session since the last regular session. The clerk shall distribute one copy of the session laws and journal to each person who was a member of the Legislature by which the laws were enacted and shall distribute a second copy to any such person upon his or her request. The clerk shall provide the session laws and journals to the Secretary of State for distribution pursuant to sections 49-501 to 49-509.01.

Source: Laws 1971, LB 36, § 1; Laws 2000, LB 534, § 1; Laws 2010, LB770, § 1.
Effective date March 18, 2010.

49-506 Distribution by Secretary of State.

After the Secretary of State has made the distribution provided by section 49-503, he or she shall deliver additional copies of the session laws and the journal of the Legislature pursuant to this section in print or electronic format as he or she determines, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

One copy of the session laws shall be delivered to the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the State

Fire Marshal, the Department of Administrative Services, the Department of Aeronautics, the Department of Agriculture, the Department of Banking and Finance, the State Department of Education, the Department of Environmental Quality, the Department of Insurance, the Department of Labor, the Department of Motor Vehicles, the Department of Revenue, the Department of Roads, the Department of Veterans' Affairs, the Department of Natural Resources, the Military Department, the Nebraska State Patrol, the Nebraska Commission on Law Enforcement and Criminal Justice, each of the Nebraska state colleges, the Game and Parks Commission, the Nebraska Library Commission, the Nebraska Liquor Control Commission, the Nebraska Accountability and Disclosure Commission, the Public Service Commission, the State Real Estate Commission, the Nebraska State Historical Society, the Public Employees Retirement Board, the Risk Manager, the Legislative Fiscal Analyst, the Public Counsel, the materiel division of the Department of Administrative Services, the State Records Administrator, the budget division of the Department of Administrative Services, the Tax Equalization and Review Commission, the inmate library at all state penal and correctional institutions, the Commission on Public Advocacy, and the Library of Congress; two copies to the Governor, the Secretary of State, the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, and the Coordinating Commission for Postsecondary Education, one of which shall be for use by the community colleges; three copies to the Department of Health and Human Services; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General; nine copies to the Revisor of Statutes; sixteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law.

One copy of the journal of the Legislature shall be delivered to the Governor, the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the Nebraska State Historical Society, the Legislative Fiscal Analyst, the Tax Equalization and Review Commission, the Commission on Public Advocacy, and the Library of Congress; two copies to the Secretary of State, the Commission of Industrial Relations, and the Nebraska Workers' Compensation Court; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General and the Revisor of Statutes; eight copies to the Clerk of the Legislature; thirteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law. The remaining copies shall be delivered to the State Librarian who shall use the same, so far as required for exchange purposes, in building up the State Library and in the manner specified in sections 49-507 to 49-509.

Source: Laws 1907, c. 78, § 6, p. 290; R.S.1913, § 3738; C.S.1922, § 3131; C.S.1929, § 49-506; R.S.1943, § 49-506; Laws 1947, c. 185, § 4, p. 611; Laws 1961, c. 243, § 2, p. 725; Laws 1969, c. 413, § 1, p. 1419; Laws 1972, LB 1284, § 17; Laws 1987, LB 572, § 2; Laws 1991, LB 663, § 34; Laws 1991, LB 732, § 117; Laws 1993, LB 3, § 34; Laws 1995, LB 271, § 6; Laws 1996, LB 906, § 1; Laws 1996, LB 1044, § 277; Laws 1999, LB 36, § 3; Laws 2000, LB 534, § 3; Laws 2000, LB 900, § 240; Laws 2000, LB 1085, § 2; Laws 2007, LB296, § 222; Laws 2007, LB334, § 6.

49-508 Distribution to new members of Legislature.

The new members of each Legislature shall be furnished by the State Librarian or his or her designee, at the commencement of the first session for which they are elected, with one copy of each of the session laws and journals of the preceding session, with a second copy furnished to any such member upon his or her request.

Source: Laws 1907, c. 78, § 8, p. 291; R.S.1913, § 3740; C.S.1922, § 3133; C.S.1929, § 49-508; R.S.1943, § 49-508; Laws 1975, LB 59, § 2; Laws 1980, LB 598, § 1; Laws 1987, LB 572, § 4; Laws 2010, LB770, § 2.
Effective date March 18, 2010.

ARTICLE 6

PRINTING AND DISTRIBUTION OF STATUTES

Section
49-617. Printing of statutes; distribution of copies.

49-617 Printing of statutes; distribution of copies.

The Revisor of Statutes shall cause the statutes to be printed. The printer shall deliver all completed copies to the Supreme Court. These copies shall be held and disposed of by the court as follows: Sixty copies to the State Library to exchange for statutes of other states; five copies to the State Library to keep for daily use; not to exceed twenty-five copies to the Legislative Council for bill drafting and related services to the Legislature and executive state officers; as many copies to the Attorney General as he or she has attorneys on his or her staff; as many copies to the Commission on Public Advocacy as it has attorneys on its staff; up to sixteen copies to the State Court Administrator; thirteen copies to the Tax Commissioner; eight copies to the Nebraska Publications Clearinghouse; six copies to the Public Service Commission; four copies to the Secretary of State; four copies to the Tax Equalization and Review Commission; four copies to the Clerk of the Legislature for use in his or her office and three copies to be maintained in the legislative chamber, one copy on each side of the chamber and one copy at the desk of the Clerk of the Legislature, under control of the sergeant at arms; three copies to the Department of Health and Human Services; two copies each to the Governor of the state, the Chief Justice and each judge of the Supreme Court, each judge of the Court of Appeals, the Clerk of the Supreme Court, the Reporter of the Supreme Court and Court of Appeals, the Commissioner of Labor, the Auditor of Public Accounts, and the Revisor of Statutes; one copy each to the Secretary of State of the United States, each Indian tribal court located in the State of Nebraska, the library of the Supreme Court of the United States, the Adjutant General, the Air National Guard, the Commissioner of Education, the State Treasurer, the Board of Educational Lands and Funds, the Director of Agriculture, the Director of Administrative Services, the Director of Aeronautics, the Director of Economic Development, the director of the Nebraska Public Employees Retirement Systems, the Director-State Engineer, the Director of Banking and Finance, the Director of Insurance, the Director of Motor Vehicles, the Director of Veterans' Affairs, the Director of Natural Resources, the Director of Correctional Services, the Nebraska Emergency Operating Center, each judge of the Nebraska Workers' Compensation Court, each commissioner of the Commission of Industrial Relations, the Nebraska Liquor Control Commission, the State Real Estate Commission, the secretary of the Game and Parks Commission, the Board of

Pardons, each state institution under the Department of Health and Human Services, each state institution under the State Department of Education, the State Surveyor, the Nebraska State Patrol, the materiel division of the Department of Administrative Services, the personnel division of the Department of Administrative Services, the Nebraska Motor Vehicle Industry Licensing Board, the Board of Trustees of the Nebraska State Colleges, each of the Nebraska state colleges, each district judge of the State of Nebraska, each judge of the county court, each judge of a separate juvenile court, the Lieutenant Governor, each United States Senator from Nebraska, each United States Representative from Nebraska, each clerk of the district court for the use of the district court, the clerk of the Nebraska Workers' Compensation Court, each clerk of the county court, each county attorney, each county public defender, each county law library, and the inmate library at all state penal and correctional institutions, and each member of the Legislature shall be entitled to two complete sets, and two complete sets of such volumes as are necessary to update previously issued volumes, but each member of the Legislature and each judge of any court referred to in this section shall be entitled, on request, to an additional complete set. Copies of the statutes distributed without charge, as listed in this section, shall be the property of the state or governmental subdivision of the state and not the personal property of the particular person receiving a copy. Distribution of statutes to the library of the College of Law of the University of Nebraska shall be as provided in sections 85-176 and 85-177.

Source: Laws 1943, c. 115, § 17, p. 407; R.S.1943, § 49-617; Laws 1944, Spec. Sess., c. 3, § 5, p. 100; Laws 1947, c. 185, § 5, p. 612; Laws 1951, c. 345, § 1, p. 1132; Laws 1957, c. 210, § 3, p. 743; Laws 1961, c. 242, § 2, p. 722; Laws 1961, c. 243, § 3, p. 725; Laws 1961, c. 415, § 5, p. 1247; Laws 1961, c. 416, § 8, p. 1266; Laws 1963, c. 303, § 3, p. 898; Laws 1965, c. 305, § 1, p. 858; Laws 1967, c. 326, § 1, p. 865; Laws 1967, c. 325, § 1, p. 863; Laws 1971, LB 36, § 4; Laws 1972, LB 1174, § 1; Laws 1972, LB 1032, § 254; Laws 1972, LB 1284, § 18; Laws 1973, LB 1, § 5; Laws 1973, LB 572, § 1; Laws 1973, LB 563, § 4; Laws 1974, LB 595, § 1; Laws 1975, LB 59, § 4; Laws 1978, LB 168, § 1; Laws 1984, LB 13, § 82; Laws 1985, LB 498, § 2; Laws 1987, LB 572, § 6; Laws 1991, LB 732, § 118; Laws 1992, Third Spec. Sess., LB 14, § 3; Laws 1995, LB 271, § 7; Laws 1996, LB 906, § 2; Laws 1996, LB 1044, § 278; Laws 1999, LB 36, § 4; Laws 2000, LB 692, § 9; Laws 2000, LB 900, § 241; Laws 2000, LB 1085, § 3; Laws 2007, LB296, § 223; Laws 2007, LB334, § 7; Laws 2007, LB472, § 8; Laws 2010, LB770, § 3.
Effective date March 18, 2010.

ARTICLE 8

DEFINITIONS, CONSTRUCTION, AND CITATION

Section
49-801. Statutes; terms, defined.
49-801.01. Internal Revenue Code; reference.
49-807. Power of attorney; powers relating to rights of survivorship and beneficiary designations.

49-801 Statutes; terms, defined.

Unless the context is shown to intend otherwise, words and phrases in the statutes of Nebraska hereafter enacted are used in the following sense:

(1) Acquire when used in connection with a grant of power or property right to any person shall include the purchase, grant, gift, devise, bequest, and obtaining by eminent domain;

(2) Action shall include any proceeding in any court of this state;

(3) Attorney shall mean attorney at law;

(4) Company shall include any corporation, partnership, limited liability company, joint-stock company, joint venture, or association;

(5) Domestic when applied to corporations shall mean all those created by authority of this state;

(6) Federal shall refer to the United States;

(7) Foreign when applied to corporations shall include all those created by authority other than that of this state;

(8) Grantee shall include every person to whom any estate or interest passes in or by any conveyance;

(9) Grantor shall include every person from or by whom any estate or interest passes in or by any conveyance;

(10) Inhabitant shall be construed to mean a resident in the particular locality in reference to which that word is used;

(11) Land or real estate shall include lands, tenements, and hereditaments and all rights thereto and interest therein other than a chattel interest;

(12) Magistrate shall include judge of the county court and clerk magistrate;

(13) Month shall mean calendar month;

(14) Oath shall include affirmation in all cases in which an affirmation may be substituted for an oath;

(15) Peace officer shall include sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests;

(16) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(17) Personal estate shall include money, goods, chattels, claims, and evidences of debt;

(18) Process shall mean a summons, subpoena, or notice to appear issued out of a court in the course of judicial proceedings;

(19) Service animal shall have the same meaning as in 28 C.F.R. 36.104, as such regulation existed on January 1, 2008;

(20) State when applied to different states of the United States shall be construed to extend to and include the District of Columbia and the several territories organized by Congress;

(21) Sworn shall include affirmed in all cases in which an affirmation may be substituted for an oath;

(22) The United States shall include territories, outlying possessions, and the District of Columbia;

(23) Violate shall include failure to comply with;

(24) Writ shall signify an order or citation in writing issued in the name of the state out of a court or by a judicial officer; and

(25) Year shall mean calendar year.

Source: Laws 1947, c. 182, § 1, p. 601; Laws 1967, c. 175, § 2, p. 490; Laws 1972, LB 1032, § 255; Laws 1975, LB 481, § 30; Laws 1984, LB 13, § 83; Laws 1988, LB 1030, § 43; Laws 1993, LB 121, § 303; Laws 2008, LB806, § 12.

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 April 6, 2010.

Source: Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1; Laws 2009, LB251, § 1; Laws 2010, LB879, § 2.
Operative date April 6, 2010.

49-807 Power of attorney; powers relating to rights of survivorship and beneficiary designations.

An agent or attorney in fact under a power of attorney, whether the power of attorney is durable or nondurable, may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent or attorney in fact the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) Create or change rights of survivorship; or

(2) Create or change a beneficiary designation.

Source: Laws 2010, LB712, § 43.
Operative date July 15, 2010.

ARTICLE 14

NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

(a) GENERAL PROVISIONS

Section
49-1401. Act, how cited.
49-1405. Ballot question, defined.
49-1409. Candidate, defined.
49-1413. Committee, defined.
49-1419. Expenditure, defined.
49-1420. Filed, filer, and filing official; defined.

(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.

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.

49-1409 Candidate, defined.

(1) Candidate shall mean an individual: (a) Who files, or on behalf of whom is filed, a fee, affidavit, nomination papers, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus, committee, or convention is certified to the appropriate filing official; (c) who is an officeholder who is the subject of a recall vote; or (d) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made. An elected officeholder shall, if eligible under law, be considered to be a candidate for reelection to that same office for the purposes of the Nebraska Political Accountability and Disclosure Act only.

(2) Candidate shall not include any individual who is a candidate within the meaning of the Federal Election Campaign Act of 1971, 2 U.S.C. 431, as such section existed on January 1, 2006.

Source: Laws 1976, LB 987, § 9; Laws 1980, LB 535, § 1; Laws 2005, LB 242, § 3.

49-1413 Committee, defined.

(1) Committee shall mean (a) any combination of two or more individuals which receives contributions or makes expenditures of over five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions or (b) a person whose primary purpose is to receive contributions or make expenditures and who receives or makes contributions or expenditures of over five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions, except that an individual, other than a candidate, shall not constitute a committee.

(2) Except as otherwise provided in section 49-1445, a committee shall be considered formed and subject to the Nebraska Political Accountability and Disclosure Act upon raising, receiving, or spending over the five thousand dollars in a calendar year referred to in this section.

(3) A corporation, labor organization, or industry, trade, or professional association is not a committee if it makes expenditures or provides personal services pursuant to sections 49-1469 to 49-1469.08.

Source: Laws 1976, LB 987, § 13; Laws 1980, LB 535, § 3; Laws 1983, LB 230, § 1; Laws 1987, LB 480, § 2; Laws 1999, LB 416, § 2; Laws 2005, LB 242, § 4.

49-1419 Expenditure, defined.

(1) Expenditure shall mean a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned.

(2) Expenditure shall include a contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of any candidate or the qualification, passage, or defeat of a ballot question.

(3) Expenditure shall not include:

(a) An amount paid pursuant to a pledge or promise to the extent the amount was previously reported as an expenditure;

(b) An expenditure for communication by a person strictly with the person's paid members or shareholders;

(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference;

(d) An expenditure by a broadcasting station, newspaper, magazine, or other periodical or publication for any news story, commentary, or editorial in support of or opposition to a candidate for elective office or a ballot question in the regular course of publication or broadcasting; or

(e) An expenditure for nonpartisan voter registration activities. This subdivision shall not apply if a candidate or a group of candidates sponsors, finances, or is identified by name with the activity. This subdivision shall apply to an

activity performed pursuant to the Election Act by an election commissioner or other registration official who is identified by name with the activity.

(4) Expenditure for purposes of sections 49-1480 to 49-1492.01 shall mean an advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, or subscription of money or anything of value and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make an expenditure. Expenditure shall not include payments for transportation by lobbyists or the cost of communicating positions from a principal to a lobbyist or from a lobbyist to a principal.

Source: Laws 1976, LB 987, § 19; Laws 1979, LB 162, § 1; Laws 1994, LB 76, § 567; Laws 1997, LB 49, § 5; Laws 2005, LB 242, § 5.

Cross References

Election Act, see section 32-101.

49-1420 Filed, filer, and filing official; defined.

(1) Filed shall mean the receipt by the appropriate filing official of a statement or report required to be filed under the Nebraska Political Accountability and Disclosure Act.

(2) Filer shall mean each person required to file a statement or report pursuant to the act.

(3) Filing official shall mean the official designated pursuant to the act to receive required statements and reports.

Source: Laws 1976, LB 987, § 20; Laws 2005, LB 242, § 6.

49-1434 Principal, lobbyist, defined.

(1) Principal means a person who authorizes a lobbyist to lobby in behalf of that principal.

(2) Lobbyist means a person who is authorized to lobby on behalf of a principal and includes an officer, agent, attorney, or employee of the principal whose regular duties include lobbying.

(3) Principal or lobbyist does not include:

(a) A public official or employee of a branch of state government, except the University of Nebraska, or an elected official of a political subdivision who is acting in the course or scope of his or her office or employment;

(b) Any publisher, owner, or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business;

(c) An employee of a principal or lobbyist whose duties are confined to typing, filing, and other types of clerical office work;

(d) Any person who limits his or her activities (i) to appearances before legislative committees and who so advises the committee at the time of his or her appearance whom he or she represents or that he or she appears at the invitation of a named member of the Legislature or at the direction of the Governor or (ii) to writing letters or furnishing written material to individual members of the Legislature or to the committees thereof;

(e) Any individual who does not engage in lobbying for another person as defined in section 49-1438; or

(f) An employee of a political subdivision whose regular employment duties do not ordinarily include lobbying activities as long as such employee is not additionally compensated for such lobbying activities, other than his or her regular salary, and is not reimbursed for any lobbying expenditures except his or her travel, lodging, and meal expenses and the meal expenses for members of the Legislature.

Source: Laws 1976, LB 987, § 34; Laws 1979, LB 162, § 2; Laws 1991, LB 232, § 3; Laws 2006, LB 940, § 3.

(b) CAMPAIGN PRACTICES

49-1445 Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.

(1) A candidate shall form a candidate committee upon raising, receiving, or expending more than five thousand dollars in a calendar year.

(2) A candidate committee may consist of one member with the candidate being the member.

(3) A person who is a candidate for more than one office shall form a candidate committee for an office upon raising, receiving, or expending more than five thousand dollars in a calendar year for that office.

(4) Two or more candidates who campaign as a slate or team for public office shall form a committee upon raising, receiving, or expending jointly in any combination more than five thousand dollars in a calendar year.

(5) The fee to file for office shall not be included in determining if a candidate has raised, received, or expended more than five thousand dollars in a calendar year.

(6) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1976, LB 987, § 45; Laws 1980, LB 535, § 5; Laws 1983, LB 230, § 2; Laws 1987, LB 480, § 3; Laws 1990, LB 601, § 1; Laws 1999, LB 416, § 3; Laws 2005, LB 242, § 7.

49-1446 Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.

(1) Each committee shall have a treasurer who is a qualified elector of this state. A candidate may appoint himself or herself as the candidate committee treasurer.

(2) Except for funds received as provided in the Campaign Finance Limitation Act, each committee shall designate one account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures. Secondary depositories shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository.

(3) No contribution shall be accepted and no expenditure shall be made by a committee which has not filed a statement of organization and which does not have a treasurer. When the office of treasurer in a candidate committee is

vacant, the candidate shall be the treasurer until the candidate appoints a new treasurer.

(4) No expenditure shall be made by a committee without the authorization of the treasurer or the assistant treasurer. The contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee.

(5) Contributions received by an individual acting in behalf of a committee shall be reported promptly to the committee's treasurer not later than five days before the closing date of any campaign statement required to be filed by the committee and shall be reported to the committee treasurer immediately if the contribution is received less than five days before the closing date.

(6) A contribution shall be considered received by a committee when it is received by the committee treasurer or a designated agent of the committee treasurer notwithstanding the fact that the contribution is not deposited in the official depository by the reporting deadline.

(7) Contributions received by a committee shall not be commingled with any funds of an agent of the committee or of any other person except for funds received or disbursed by a separate segregated political fund for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, as provided in section 49-1469.06, including independent expenditures made in such elections.

(8) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1976, LB 987, § 46; Laws 1977, LB 41, § 40; Laws 1980, LB 535, § 6; Laws 1988, LB 1136, § 1; Laws 1993, LB 587, § 12; Laws 2005, LB 242, § 8.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-1446.01 Committee; certain expenditure of funds authorized.

(1) No committee, other than a political party committee, may expend funds except to make an expenditure, as defined in subsection (1), (2), or (3) of section 49-1419, or as provided in section 49-1446.03 or 49-1469.06.

(2) A candidate committee of an officeholder may make expenditures for the payment of installation and use of telephone and telefax machines located in an officeholder's public office and used by such officeholder.

(3) Any committee, including a political party committee, may invest funds in investments authorized for the state investment officer in the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Nothing in this section shall prohibit a separate segregated political fund from disbursing funds as provided in section 49-1469.06.

Source: Laws 1981, LB 134, § 5; Laws 1988, LB 1136, § 2; Laws 1988, LB 1174, § 1; Laws 1992, LB 722, § 1; Laws 1994, LB 1066, § 39; Laws 1997, LB 49, § 8; Laws 2002, LB 1086, § 3; Laws 2005, LB 242, § 9.

Cross References

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

49-1446.02 Committee; certain expenditure of funds; prohibited.

Notwithstanding any other provision of the Nebraska Political Accountability and Disclosure Act, no committee shall expend funds for the purchase or payment of:

(1) Clothes or medical or dental expenses of a candidate or the members of his or her immediate family;

(2) Installment payments for an automobile owned by a candidate;

(3) Mortgage or rental payments for a permanent residence of a candidate;

(4) The satisfaction of personal debts, including installment payments on personal loans, except campaign loans subject to reporting required by subsection (2) of section 49-1456;

(5) Personal services, including the services of a lawyer or accountant, except campaign services subject to reporting pursuant to the provisions of section 49-1455; or

(6) Office supplies, staff, or furnishings for the public office for which an individual is a candidate for nomination or election except as set out in subsection (2) of section 49-1446.01.

Source: Laws 1981, LB 134, § 6; Laws 1992, LB 722, § 2; Laws 2005, LB 242, § 10.

49-1446.03 Committee; expenditure of funds; authorized.

Except as otherwise provided in the Nebraska Political Accountability and Disclosure Act, any committee may, in addition to the expenditures set forth in section 49-1446.01, make expenditures for the following:

(1) The necessary continued operation of the campaign office or offices of the candidate or political committee;

(2) Social events primarily for the benefit of campaign workers and volunteers or constituents;

(3) Obtaining public input and opinion;

(4) Repayment of campaign loans incurred prior to election day;

(5) Newsletters and other communications for the purpose of information, thanks, acknowledgment, or greetings or for the purpose of political organization and planning;

(6) Gifts of acknowledgment, including flowers and charitable contributions, except that gifts to any one individual shall not exceed fifty dollars in any one calendar year;

(7) Meals, lodging, and travel by an officeholder related to his or her candidacy and for members of the immediate family of the officeholder when involved in activities related to his or her candidacy;

(8) Conference fees, meals, lodging, and travel by an officeholder and his or her staff when involved in activities related to the duties of his or her public office; and

(9) In the case of the candidate committee for the Governor, conference fees, meals, lodging, and travel by the Governor, his or her staff, and his or her immediate family, when involved in activities related to the duties of the Governor.

Source: Laws 1981, LB 134, § 7; Laws 2005, LB 242, § 11.

49-1446.04 Candidate committee; loans; restrictions; civil penalty.

(1) A candidate committee shall not accept more than fifteen thousand dollars in loans prior to or during the first thirty days after formation of the candidate committee.

(2) After the thirty-day period and until the end of the term of the office to which the candidate sought nomination or election, the candidate committee shall not accept loans, other than loans allowed under subsection (2) of section 32-1608.03, in an aggregate amount of more than fifty percent of the contributions of money, other than the proceeds of loans, which the candidate committee has received during such period as of the date of the receipt of the proceeds of the loan. Any loans which have been repaid as of such date shall not be taken into account for purposes of the aggregate loan limit.

(3) A candidate committee shall not pay interest, fees, gratuities, or other sums in consideration of a loan, advance, or other extension of credit to the candidate committee by the candidate, a member of the candidate's immediate family, or any business with which the candidate is associated.

(4) The penalty for violation of this section shall be a civil penalty of not less than two hundred fifty dollars and not more than the amount of money received by a candidate committee in violation of this section if the candidate committee received more than two hundred fifty dollars. The commission shall assess and collect the civil penalty and shall remit the penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1995, LB 399, § 2; Laws 2005, LB 242, § 12; Laws 2006, LB 188, § 13.

49-1446.06 Transferred to section 49-1474.02.

49-1447 Committee treasurer; statements or reports; duties; committee records; violation; penalty.

(1) The committee treasurer shall keep detailed accounts, records, bills, and receipts necessary to substantiate the information contained in a statement or report filed pursuant to sections 49-1445 to 49-1479.02 or rules and regulations adopted and promulgated under the Nebraska Political Accountability and Disclosure Act.

(2)(a) For any committee other than a candidate committee, the committee treasurer shall be responsible for filing all statements and reports of the committee required to be filed under the act and shall be personally liable subject to section 49-1461.01 for any late filing fees, civil penalties, and interest that may be due under the act as a result of a failure to make such filings.

(b) For candidate committees, the candidate shall be responsible for filing all statements and reports required to be filed by his or her candidate committee under the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act. The candidate shall be personally liable for any late filing fees, civil penalties, and interest that may be due under either act as a result of a failure to make such filings and may use funds of the candidate committee to pay such fees, penalties, and interest.

(3) The committee treasurer shall record the name and address of each person from whom a contribution is received except for contributions of fifty dollars or less received pursuant to subsection (2) of section 49-1472.

(4) The records of a committee shall be preserved for five years and shall be made available for inspection as authorized by the commission.

(5) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 47; Laws 1977, LB 41, § 41; Laws 2000, LB 438, § 2; Laws 2005, LB 242, § 13.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-1449 Committee; statement of organization; filing; procedure; late filing fees.

(1) Each committee shall file a statement of organization pursuant to this section and pay a registration fee pursuant to section 49-1449.01 with the commission. Except as provided in subsection (2) of this section, such statement of organization shall be filed and fee paid within ten days after a committee is formed. The commission shall maintain a statement of organization filed by a committee until notified of the committee's dissolution. Any person who fails to file with the commission a statement of organization required by this subsection shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this subsection, not to exceed seven hundred fifty dollars.

(2) If the committee is formed within thirty days prior to an election for which the committee exists, the statement of organization shall be filed and registration fee paid within two business days after the committee is formed. Any person who fails to file with the commission a statement of organization required by this subsection shall pay to the commission a late filing fee of one hundred dollars for each day the statement remains not filed in violation of this subsection, not to exceed one thousand dollars.

Source: Laws 1976, LB 987, § 49; Laws 1980, LB 535, § 7; Laws 1999, LB 416, § 5; Laws 2001, LB 242, § 3; Laws 2003, LB 349, § 1; Laws 2007, LB527, § 2.

49-1449.01 Committee; statement of organization; registration fee; failure to perfect filing; effect.

(1) At the time that each committee files its statement of organization pursuant to section 49-1449, the committee shall pay to the commission a registration fee of one hundred dollars. The filing of a statement of organization is not perfected unless accompanied by the registration fee.

(2) A committee which has not perfected its filing of a statement of organization by the date due as specified in section 49-1449 shall not make or receive contributions or expenditures until such time as the filing of the statement of organization is perfected, except that:

(a) A committee may make an expenditure to pay the registration fee; and

(b) A committee may make expenditures for thirty days after the termination of its registration if the expenditures are part of the process of dissolving the

committee and the committee dissolves within thirty days after the termination of its registration.

(3) The registration fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Nebraska Accountability and Disclosure Commission Cash Fund.

Source: Laws 2007, LB527, § 3.

49-1453 Committee; dissolution; procedure.

(1) A committee may be dissolved by the filing of a statement of dissolution with the commission, the payment of all fees, penalties, and interest which may be owed, and complying with the rules and regulations of the commission for dissolution of committees. Except as otherwise provided in subsection (2) of this section, no committee shall be dissolved until such statement is filed and such payments are made.

(2) A committee may be dissolved if the commission determines that fees, penalties, and interest owed by a committee are uncollectible.

Source: Laws 1976, LB 987, § 53; Laws 2000, LB 438, § 4; Laws 2005, LB 242, § 14.

49-1455 Committee campaign statement; contents.

(1) The campaign statement of a committee, other than a political party committee, shall contain the following information:

(a) The filing committee's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of its committee treasurer;

(b) Under the heading RECEIPTS, the total amount of contributions received during the period covered by the campaign statement; under the heading EXPENDITURES, the total amount of expenditures made during the period covered by the campaign statement; and the cumulative amount of those totals for the election period. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures;

(c) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

(d) The full name of each individual from whom contributions totaling more than two hundred fifty dollars are received during the period covered by the report, together with the individual's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that individual for the election period;

(e) The full name of each person, except those individuals reported under subdivision (1)(d) of this section, which contributed a total of more than two hundred fifty dollars during the period covered by the report together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by the person for the election period;

(f) The name of each committee which is listed as a contributor shall include the full name of the committee's treasurer;

(g) Except as otherwise provided in subsection (3) of this section: The full name and street address of each person to whom expenditures totaling more than two hundred fifty dollars were made, together with the date and amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; and the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee;

(h) The amount and the date of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against that candidate or ballot question for the election period. An expenditure made in support of more than one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both; and

(i) The total amount of funds disbursed by a separate segregated political fund, by state, for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, including independent expenditures made in such elections.

(2) For purposes of this section, election period means (a) the period beginning January 1 of the calendar year prior to the year of the election in which the candidate is seeking office through the end of the calendar year of such election for candidate committees of candidates seeking covered elective offices as defined in subdivision (1)(a) of section 32-1603, (b) the period beginning July 1 of the calendar year prior to the year of the election in which the candidate is seeking office through the end of the calendar year of such election for candidate committees of candidates seeking covered elective offices so defined in subdivision (1)(b) of section 32-1603, and (c) the calendar year of the election for all other committees.

(3) A campaign statement shall include the total amount paid to individual petition circulators during the reporting period, if any, but shall not include the name, address, or telephone number of any individual petition circulator if the only payment made to such individual was for services as a petition circulator.

Source: Laws 1976, LB 987, § 55; Laws 1988, LB 1136, § 3; Laws 1993, LB 587, § 13; Laws 1997, LB 420, § 18; Laws 1999, LB 416, § 7; Laws 2008, LB39, § 6.

49-1458 Late contribution; how reported; late filing fee.

(1) A committee which receives a late contribution shall report the contribution to the commission by filing a report within two days after the date of its receipt. The report may be filed by hand delivery, facsimile transmission, telegraph, express delivery service, or any other written means of communication, including electronic means approved by the commission, and need not contain an original signature.

(2) The report shall include the full name, street address, occupation, employer, and principal place of business of the contributor, the amount of the contribution, and the date of receipt.

(3) A late contribution shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(4) Any committee which fails to file a report of late contributions with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late contribution which was required to be reported, not to exceed ten percent of the amount of the late contribution which was required to be reported.

(5) For purposes of this section, late contribution means a contribution of one thousand dollars or more received after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

Source: Laws 1976, LB 987, § 58; Laws 1996, LB 1263, § 1; Laws 1999, LB 416, § 10; Laws 2000, LB 438, § 5; Laws 2005, LB 242, § 15; Laws 2007, LB434, § 1.

49-1461.01 Ballot question committee; surety bond; requirements; violations; penalty.

(1) A ballot question committee shall file with the commission a surety bond running in favor of the State of Nebraska with surety by a corporate bonding company authorized to do business in this state and conditioned upon the payment of all fees, penalties, and interest which may be imposed under the Nebraska Political Accountability and Disclosure Act.

(2) A bond in the amount of five thousand dollars shall be filed with the commission within thirty days after the committee receives contributions or makes expenditures in excess of one hundred thousand dollars in a calendar year, and the amount of the bond shall be increased by five thousand dollars for each additional five hundred thousand dollars received or expended in a calendar year.

(3) Proof of any required increase in the amount of the bond shall be filed with the commission within thirty days after each additional five hundred thousand dollars is received or expended. Any failure to pay late filing fees, civil penalties, or interest due under the act shall be recovered from the proceeds of the bond prior to recovery from the treasurer of the committee.

(4) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 2000, LB 438, § 3; Laws 2005, LB 242, § 16.

49-1463 Campaign statement; statement of exemption; violations; late filing fee; civil penalty.

(1) Any person who fails to file a campaign statement with the commission under sections 49-1459 to 49-1463 shall pay to the commission a late filing fee of twenty-five dollars for each day the campaign statement remains not filed in violation of this section, not to exceed seven hundred fifty dollars. In addition, if a candidate who files an affidavit under subdivision (5)(a) of section 32-1604 fails to file a campaign statement as required by sections 49-1459 to 49-1463 within the prescribed time resulting in any abiding candidate not receiving public funds as described in subsection (6) of section 32-1604 or resulting in a delay in the receipt of such funds, the commission shall assess a civil penalty of not less than two thousand dollars and not more than three times (a) the

amount of public funds the abiding candidate received after the delay or (b) the amount of public funds the abiding candidate would have received if the campaign statement had been filed within the prescribed time.

(2) Any committee which fails to file a statement of exemption with the commission under subsection (2) of section 49-1459 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement of exemption remains not filed in violation of this section, not to exceed two hundred twenty-five dollars.

Source: Laws 1976, LB 987, § 63; Laws 1980, LB 535, § 13; Laws 1998, LB 632, § 4; Laws 1999, LB 416, § 12; Laws 2006, LB 188, § 14.

49-1463.01 Late filing fee; relief; reduction or waiver; when.

(1) A person required to pay a late filing fee imposed under section 32-1604, 32-1604.01, 32-1606.01, 49-1449, 49-1458, 49-1463, 49-1467, 49-1469.08, 49-1478.01, or 49-1479.01 may apply to the commission for relief. The commission by order may reduce the amount of a late filing fee imposed and waive any or all of the interest due on the fee upon a showing by such person that (a) the circumstances indicate no intent to file late, (b) the person has not been required to pay late filing fees for two years prior to the time the filing was due, (c) the late filing shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fees and waiver of interest would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(2) A person required to pay a late filing fee imposed for failure to file a statement of exemption under subsection (2) of section 49-1459 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and waive any or all of the interest due on the fee, and the person shall not be required to make a showing as provided by subsection (1) of this section.

Source: Laws 1987, LB 480, § 7; Laws 1996, LB 1263, § 2; Laws 1997, LB 420, § 19; Laws 1998, LB 632, § 5; Laws 2000, LB 438, § 7; Laws 2001, LB 242, § 4; Laws 2005, LB 242, § 17; Laws 2006, LB 188, § 15.

49-1463.02 Late filing fees and civil penalties; interest.

Interest shall accrue on all late filing fees and civil penalties imposed under the Nebraska Political Accountability and Disclosure Act at the rate specified in section 45-104.02, as such rate may from time to time be adjusted. The interest shall begin to accrue thirty days after the commission sends notice to the person of the assessment of the late filing fee or civil penalty. A written request filed with the commission for relief from late filing fees shall stay the accrual of interest on a late filing fee until such time as the commission grants or denies the request. The commission may waive the payment of accrued interest in the amount of twenty-five dollars or less.

Source: Laws 2000, LB 438, § 9; Laws 2007, LB527, § 4.

49-1467 Person; independent expenditure report; when filed; contents; public availability; late filing fee; violation; penalty.

(1) Any person, other than a committee, who makes an independent expenditure advocating the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, which is in an amount of more than two hundred fifty dollars, shall file a report of the independent expenditure, within ten days, with the commission.

(2) The report shall be made on an independent expenditure report form provided by the commission and shall include the date of the expenditure, a brief description of the nature of the expenditure, the amount of the expenditure, the name and address of the person to whom it was paid, the name and address of the person filing the report, and the name, address, occupation, employer, and principal place of business of each person who contributed more than two hundred fifty dollars to the expenditure.

(3) The commission shall make all independent expenditure reports available to the public on its web site as soon as practicable. An independent expenditure report shall be available on the web site for the duration of the election period for which the report is filed and for an additional six months thereafter.

(4) Any person who fails to file a report of an independent expenditure with the commission shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this section not to exceed seven hundred fifty dollars.

(5) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1976, LB 987, § 67; Laws 1977, LB 41, § 42; Laws 1996, LB 1263, § 3; Laws 1999, LB 416, § 13; Laws 2001, LB 242, § 6; Laws 2005, LB 242, § 18.

49-1469 Businesses and organizations; contributions, expenditures, or services; report; contents; separate segregated political fund; when required.

(1) A corporation, labor organization, or industry, trade, or professional association, which is organized under the laws of the State of Nebraska or doing business in this state and which is not a committee, may:

(a) Make an expenditure;

(b) Make a contribution; and

(c) Provide personal services.

(2) Such a corporation, labor organization, or industry, trade, or professional association shall not be required to file reports of independent expenditures pursuant to section 49-1467, but if it makes a contribution or expenditure, or provides personal services, with a value of more than two hundred fifty dollars, it shall file a report with the commission within ten days after the end of the calendar month in which the contribution or expenditure is made or the personal services are provided. The report shall include:

(a) The nature, date, and value of the contribution or expenditure and the name of the candidate or committee or a description of the ballot question to or for which the contribution or expenditure was made; and

(b) A description of any personal services provided, the date the services were provided, and the name of the candidate or committee or a description of the ballot question to or for which the personal services were provided.

(3) A corporation, labor organization, or industry, trade, or professional association may not receive contributions unless it establishes and administers a separate segregated political fund which shall be utilized only in the manner set forth in sections 49-1469.05 and 49-1469.06.

Source: Laws 1976, LB 987, § 69; Laws 1977, LB 41, § 43; Laws 1980, LB 535, § 15; Laws 1983, LB 214, § 1; Laws 1988, LB 1136, § 4; Laws 1993, LB 587, § 17; Laws 1996, LB 1263, § 4; Laws 1999, LB 416, § 14; Laws 2005, LB 242, § 19.

49-1469.01 Transferred to section 49-1476.

49-1469.02 Transferred to section 49-1476.01.

49-1469.03 Transferred to section 49-1476.02.

49-1469.04 Transferred to section 49-1479.02.

49-1469.05 Businesses and organizations; separate segregated political fund; restrictions.

(1) A corporation, labor organization, or industry, trade, or professional association which establishes and administers a separate segregated political fund:

(a) Shall not make an expenditure to such fund, except that it may make expenditures and provide personal services for the establishment and administration of such separate segregated political fund; and

(b) Shall file the reports required by subsection (2) of section 49-1469 with respect to the expenditures made or personal services provided for the establishment and administration of such fund but need not file such reports for the expenditures made from such fund.

(2) If a corporation makes an expenditure to a separate segregated political fund which is established and administered by an industry, trade, or professional association of which such corporation is a member, such corporation shall not be required to file the reports required by subsection (2) of section 49-1469.

Source: Laws 2005, LB 242, § 20.

49-1469.06 Businesses and organizations; separate segregated political fund; contributions and expenditures; limitations.

(1) All contributions to and expenditures from a separate segregated political fund shall be limited to money or anything of ascertainable value obtained through the voluntary contributions of the employees, officers, directors, stockholders, or members of the corporation, including a nonprofit corporation, labor organization, or industry, trade, or professional association, and the affiliates thereof, under which such fund was established.

(2) No contribution or expenditure shall be received or made from such fund if obtained or made by using or threatening to use job discrimination or financial reprisals.

(3) Only expenditures to candidates and committees and independent expenditures may be made from a fund established by a corporation, labor organization, or industry, trade, or professional organization. Such separate segregated political fund may receive and disburse funds for the purpose of supporting or

opposing candidates and committees in elections in states other than Nebraska and candidates for federal office and making independent expenditures in such elections if such receipts and disbursements are made in conformity with the solicitation provisions of this section and the corporation, labor organization, or industry, trade, or professional association which establishes and administers such fund complies with the laws of the jurisdiction in which such receipts or disbursements are made.

(4) The expenses for establishment and administration of a separate segregated political fund of a corporation, labor organization, or industry, trade, or professional association may be paid from the separate segregated political fund of such corporation, labor organization, or industry, trade, or professional association.

Source: Laws 2005, LB 242, § 21.

49-1469.07 Businesses and organizations; separate segregated political fund; status.

A separate segregated political fund is hereby declared to be an independent committee and subject to all of the provisions of the Nebraska Political Accountability and Disclosure Act applicable to independent committees, and the corporation, labor organization, or industry, trade, or professional association which establishes and administers such fund shall make the reports and filings required therefor.

Source: Laws 2005, LB 242, § 22.

49-1469.08 Businesses and organizations; late filing fee; violation; penalty.

(1) Any corporation, labor organization, or industry, trade, or professional association which fails to file a report with the commission required by section 49-1469 or 49-1469.07 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of such sections not to exceed seven hundred fifty dollars.

(2) Any person who knowingly violates this section, section 49-1469, 49-1469.05, 49-1469.06, or 49-1469.07 shall be guilty of a Class III misdemeanor.

Source: Laws 2005, LB 242, § 23.

49-1474.02 Dissemination of message by telecommunication or electronic means; requirements.

(1) Any person who makes an expenditure reportable under the Nebraska Political Accountability and Disclosure Act to disseminate by any means of telecommunication a prerecorded message or a recorded message relating to a candidate or ballot question shall include, immediately preceding the message, the name of the person making the expenditure. Such messages shall be disseminated only between the hours of 8 a.m. and 9 p.m. at the location of the person receiving the messages.

(2) Any person who makes an expenditure reportable under the act to disseminate by any means of telecommunication a message relating to a candidate or ballot question which is not a recorded message or a prerecorded message shall, immediately upon the request of the recipient of the message, disclose the name of the person making the expenditure. If the message is

disseminated through an employee or agent of the person making the expenditure, the employee or agent shall, immediately upon the request of the recipient of the message, disclose the name of the person making the expenditure.

(3) Any person who makes an expenditure reportable under the act to disseminate by any electronic means, including the Internet or email, a message relating to a candidate or ballot question shall include in the message the name of the person making the expenditure.

Source: Laws 2001, LB 242, § 2; R.S.1943, (2003), § 49-1446.06; Laws 2005, LB 242, § 24; Laws 2008, LB720, § 1.

49-1476 Lottery contractor; legislative findings.

The Legislature finds that in sponsoring a lottery, the state undertakes a unique enterprise which can succeed only if the public has confidence in the integrity of the lottery and the process by which government decisions relating to the lottery are made. The Legislature finds that there is a compelling state interest in ensuring the integrity and the appearance of integrity of elections for state elective office and of the state-sponsored lottery. The Legislature further finds that the practice of contributions being given to candidates for state elective offices by individuals or entities holding contracts with the state to supply goods or services in connection with the state-sponsored lottery for significant monetary prizes contributes to actual corruption or the appearance of corruption and diminishes public confidence in government and in the state-sponsored lottery. The Legislature finds that sections 49-1476.01 and 49-1476.02 are consistent with these findings.

Source: Laws 1995, LB 28, § 4; R.S.1943, (2003), § 49-1469.01; Laws 2005, LB 242, § 25.

49-1476.01 Lottery contractor; contributions and expenditures prohibited; penalty.

(1) A person who is awarded a contract by the Director of the Lottery Division as a lottery contractor for a major procurement as defined in section 9-803 may not make a contribution to or an independent expenditure for a candidate for a state elective office during the term of the contract or for three years following the most recent award or renewal of the contract.

(2) A person shall be considered to have made a contribution or independent expenditure if the contribution or independent expenditure is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in sections 49-1469 to 49-1469.08, or by anyone acting on behalf of the person, officer, or fund.

(3) A person who knowingly or intentionally violates this section shall be guilty of a Class IV felony.

Source: Laws 1995, LB 28, § 5; R.S.1943, (2003), § 49-1469.02; Laws 2005, LB 242, § 26.

49-1476.02 Lottery contractor contribution; receipt prohibited; penalty.

(1) No person, including a candidate or candidate committee, shall accept or receive any contribution prohibited by section 49-1476.01. A person who knowingly or intentionally accepts any such contribution shall be guilty of a Class III misdemeanor.

(2) Any person, including a candidate or candidate committee, who receives a contribution prohibited by section 49-1476.01 shall, upon being notified of the violation by the commission, transfer a sum equal to the amount of such contribution to a tax-exempt charitable institution.

Source: Laws 1995, LB 28, § 6; R.S.1943, (2003), § 49-1469.03; Laws 2005, LB 242, § 27.

49-1478 Expenditure; limitations; reports required; violations; penalty.

(1) An expenditure shall not be made, other than for overhead or normal operating expenses, by an agent or an independent contractor, including an advertising agency, on behalf of or for the benefit of a person unless the expenditure is reported by the committee as if the expenditure were made directly by the committee, or unless the agent or independent contractor files an agent's expenditure report as provided in subsection (3) of this section. The agent or independent contractor shall make known to the committee all information required to be reported by the committee. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(2) An expenditure shall not be made, other than for overhead or normal operating expenses, by a person gathering petition signatures on behalf of or for the benefit of a person, including a ballot question committee, unless the expenditure is reported by the ballot question committee as if the expenditure were made directly by the committee, or unless the person gathering petition signatures files an agent's expenditure report as provided in subsection (3) of this section. The person gathering petition signatures shall make known to the committee all information required to be reported by the committee. For purposes of this section, petition signature means a signature affixed to a petition for the purpose of qualifying a ballot question to appear on a ballot. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(3) A person gathering petition signatures, an agent, or an independent contractor who is required to file an agent's report shall file a separate agent's report for each person on whose behalf an expenditure is made. An agent's report shall be filed with the commission within ten days after the end of the calendar month in which the expenditure is made. An agent's report shall include:

(a) The name, permanent address, temporary address, permanent telephone number, and temporary telephone number of the person making expenditures for the purpose of gathering signatures, the agent, or the independent contractor;

(b) The name, address, and telephone number of the person on whose behalf the expenditure is made;

(c) The name, permanent address, and temporary address of the person to whom the expenditure is made, except that if the expenditure is solely for the services of an individual circulating petitions, such individual's name and address shall not be included;

(d) The date and amount of each expenditure; and

(e) A description of the goods or services purchased and the purpose of the goods or services.

(4) A person required to report under subsection (3) of this section shall include in the report the total amount paid to individual petition circulators

during the reporting period but shall not include the name, address, or telephone number of any individual petition circulator if the only payment made to such individual was for services as a petition circulator.

Source: Laws 1976, LB 987, § 78; Laws 1977, LB 41, § 51; Laws 1997, LB 49, § 9; Laws 2008, LB39, § 7.

49-1478.01 Late independent expenditure; reports required; late filing fee.

(1) An independent committee, including a separate segregated political fund, which makes a late independent expenditure shall report the expenditure to the commission by filing within two days after the date of the expenditure the committee's full name and street address, the amount of the expenditure, and the date of the expenditure. The report shall include (a) the full name and street address of the recipient of the expenditure, (b) the name and office sought of the candidate whose nomination or election is supported or opposed by the expenditure, and (c) the identification of the ballot question, the qualification, passage, or defeat of which is supported or opposed. Filing of a report of a late independent expenditure may be by any written means of communication, including electronic means approved by the commission, and need not contain an original signature. A late independent expenditure shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(2) A committee which fails to file a report of a late independent expenditure with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late independent expenditure which was required to be reported, not to exceed ten percent of the amount of the late independent expenditure which was required to be reported.

(3) For purposes of this section, late independent expenditure means an independent expenditure as defined in section 49-1428 of one thousand dollars or more made after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

Source: Laws 2000, LB 438, § 6; Laws 2007, LB434, § 2.

49-1479.01 Earmarked contribution; requirements; report; late filing fee; violation; penalty.

(1) Any contribution by a person made on behalf of or to a candidate or committee, including contributions which are in any way earmarked or otherwise directed to the candidate or committee through an intermediary or agent, shall be considered to be a contribution from the person to the candidate or committee.

(2) For purposes of this section, earmarked shall mean a designation, instruction, or encumbrance, including those which are direct or indirect, express or implied, or oral or written, which results in any part of a contribution or expenditure, including any in-kind expenditure made in exchange for a contribution, being made to or expended on behalf of a candidate or a committee.

(3) Any intermediary or agent, other than a committee, which receives an earmarked contribution shall forward the earmarked contribution to the recipient candidate or committee within ten days after receipt of such contribution.

(4) An intermediary or agent which is not a committee shall file a report of the earmarked contribution with the commission within ten days after receipt of the contribution. Any committee which is an intermediary or agent shall file a report of the earmarked contribution with the commission by the date the next campaign statement is required to be filed. The report of the earmarked contribution filed pursuant to this section shall be on a form prescribed by the commission.

(5) Any intermediary or agent making an earmarked contribution shall disclose to the recipient of the earmarked contribution the name and address of the intermediary or agent and the actual source of the contribution by providing the recipient with a copy of the report of the earmarked contribution at the time that the earmarked contribution is made.

(6) Any person or committee which fails to file a report of an earmarked contribution with the commission as required by this section shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this section not to exceed seven hundred fifty dollars.

(7) Any person who knowingly violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1987, LB 480, § 5; Laws 1996, LB 1263, § 5; Laws 1999, LB 416, § 16; Laws 2005, LB 242, § 28.

49-1479.02 Major out-of-state contributor; report; contents; applicability; late filing fee.

(1) A major out-of-state contributor shall file with the commission an out-of-state contribution report. An out-of-state contribution report shall be filed on a form prescribed by the commission within ten days after the end of the calendar month in which a person becomes a major out-of-state contributor. For the remainder of the calendar year, a major out-of-state contributor shall file an out-of-state contribution report with the commission within ten days after the end of each calendar month in which the contributor makes a contribution or expenditure.

(2) An out-of-state contribution report shall disclose as to each contribution or expenditure not previously reported (a) the amount, nature, value, and date of the contribution or expenditure, (b) the name and address of the committee, candidate, or person who received the contribution or expenditure, (c) the name and address of the person filing the report, and (d) the name, address, occupation, and employer of each person making a contribution of more than two hundred dollars in the calendar year to the person filing the report.

(3) This section shall not apply to (a) a person who files a report of a contribution or an expenditure pursuant to subsection (2) of section 49-1469, (b) a person required to file a report or campaign statement pursuant to section 49-1469.07, (c) a committee having a statement of organization on file with the commission, or (d) a person or committee registered with the Federal Election Commission.

(4) Any person who fails to file an out-of-state contribution report with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such person shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the contributions or expenditures which were required to be reported, not to exceed ten percent of the amount of the contributions or expenditures which were required to be reported.

Source: Laws 1997, LB 49, § 7; Laws 1999, LB 416, § 15; R.S.1943, (2003), § 49-1469.04; Laws 2005, LB 242, § 29; Laws 2007, LB434, § 3.

(c) LOBBYING PRACTICES

49-1480.01 Application for registration; fee; collection; registration renewal.

(1) The Clerk of the Legislature shall collect a fee of two hundred dollars for an application for registration by a lobbyist for each principal if the lobbyist receives or will receive compensation for such lobbying. Except as provided by section 49-1434, a lobbyist who receives compensation shall include an individual who is an employee or member of a principal whose duties of employment, office, or membership include engaging in lobbying activities.

(2) A fee of fifteen dollars shall be collected for an application by a lobbyist for each principal if the lobbyist is not receiving and will not be receiving compensation for such lobbying. Any lobbyist who receives compensation who did not anticipate receiving such compensation at the time of application for registration shall, within five days of the receipt of any compensation, file an amended registration form which shall be accompanied by an additional fee of one hundred eighty-five dollars for such year.

(3) The registration of a lobbyist for each of his or her principals may be renewed by the payment of a fee as provided by subsections (1) and (2) of this section. Such fee shall be paid to the Clerk of the Legislature on or before December 31 of each calendar year. The registration of a lobbyist for each of his or her principals shall terminate as of the end of the calendar year for which the lobbyist registered unless the registration is renewed as provided in this section.

Source: Laws 1994, LB 872, § 2; Laws 1994, LB 1243, § 3; Laws 2005, LB 242, § 30.

49-1481 List of registered lobbyists and principals; print in Legislative Journal; additional information; when.

(1) On the fourth legislative day of each legislative session, the Clerk of the Legislature shall insert the following in the Legislative Journal:

(a) A list of the names of all lobbyists whose registration is then in effect;

(b) The name of the principal in whose behalf the lobbyist is registered; and

(c) Any additional information as directed by the Legislature.

(2) On the last legislative day of each week after the fourth legislative day, the clerk shall cause to be inserted in the Legislative Journal the names of any

additional lobbyists and principals who have registered or who have changed their registration.

Source: Laws 1976, LB 987, § 81; Laws 2005, LB 242, § 31.

49-1482 Lobbyists and principals; registration fees; disbursement.

The Clerk of the Legislature shall charge a fee pursuant to section 49-1480.01 for each application for registration by a lobbyist for each principal. Such fees when collected shall be remitted to the State Treasurer. Three-fourths of such fees shall be credited to the Nebraska Accountability and Disclosure Commission Cash Fund and one-fourth to the Clerk of the Legislature Cash Fund.

Source: Laws 1976, LB 987, § 82; Laws 1977, LB 4, § 1; Laws 1982, LB 928, § 41; Laws 1994, LB 872, § 3; Laws 1994, LB 1243, § 4; Laws 2005, LB 242, § 32.

49-1483 Lobbyist and principal; file separate statements; when; contents.

(1) Every lobbyist who is registered or required to be registered shall, for each of his or her principals, file a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter. Every principal employing a lobbyist who is registered or required to be registered shall file a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter.

(2) Each statement shall show the following:

(a) The total amount received or expended directly or indirectly for the purpose of carrying on lobbying activities, with the following categories of expenses each being separately itemized: (i) Miscellaneous expenses; (ii) entertainment, including expenses for food and drink as provided in subdivision (3)(a) of this section; (iii) lodging expenses; (iv) travel expenses; (v) lobbyist compensation, except that when a principal retains the services of a person who has only part-time lobbying duties, only the compensation paid which is reasonably attributable to influencing legislative action need be reported; (vi) lobbyist expense reimbursement; (vii) admissions to a state-owned facility or a state-sponsored industry or event as provided in subdivision (3)(a) of this section; and (viii) extraordinary office expenses directly related to the practice of lobbying;

(b) A detailed statement of any money which is loaned, promised, or paid by a lobbyist, a principal, or anyone acting on behalf of either to an official in the executive or legislative branch or member of such official's staff. The detailed statement shall identify the recipient and the amount and the terms of the loan, promise, or payment; and

(c) The total amount expended for gifts, other than admissions to a state-owned facility or a state-sponsored industry or event, as provided in subdivision (3)(a) of this section.

(3)(a) Each statement shall disclose the aggregate expenses for entertainment, admissions, and gifts for each of the following categories of elected officials: Members of the Legislature; and officials in the executive branch of the state. Such disclosures shall be in addition to the entertainment expenses reported under subdivision (2)(a)(ii) of this section, admissions reported under subdivi-

sion (2)(a)(vii) of this section, and gifts reported under subdivision (2)(c) of this section.

(b) For purposes of reporting aggregate expenses for entertainment for members of the Legislature and officials in the executive branch of the state as required by subdivision (3)(a) of this section, the reported amount shall include the actual amounts attributable to entertaining members of the Legislature and officials in the executive branch of the state. When the nature of an event at which members of the Legislature are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of members of the Legislature in attendance. When the nature of an event at which officials in the executive branch of the state are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of officials in the executive branch of the state in attendance. For purposes of this subdivision, the average cost per person means the cost of the event divided by the number of persons expected to attend the event.

(4) The lobbyist shall also file any changes or corrections to the information set forth in the registration required pursuant to section 49-1480 so as to reflect the correctness of such information as of the end of each calendar quarter for which such statement is required by this section.

(5) If a lobbyist does not expect to receive lobbying receipts from or does not expect to make lobbying expenditures for a principal, the quarterly statements required by this section as to such principal need not be filed by the lobbyist if the principal and lobbyist both certify such facts in writing to the Clerk of the Legislature. A lobbyist exempt from filing quarterly statements pursuant to this section shall (a) file a statement of activity pursuant to section 49-1488 and (b) resume or commence filing quarterly statements with regard to such principal starting with the quarterly period the lobbyist receives lobbying receipts or makes lobbying expenditures for such principal.

(6) If a principal does not expect to receive lobbying receipts or does not expect to make lobbying expenditures, the quarterly statements required pursuant to this section need not be filed by the principal if the principal and lobbyist both certify such facts in writing to the Clerk of the Legislature. A principal exempt from filing quarterly statements pursuant to this section shall commence or resume filing quarterly statements starting with the quarterly period the principal receives lobbying receipts or makes lobbying expenditures.

(7) A principal shall report the name and address of every person from whom it has received more than one hundred dollars in any one month for lobbying purposes.

(8) For purposes of sections 49-1480 to 49-1492.01, calendar quarter shall mean the first day of January through the thirty-first day of March, the first day of April through the thirtieth day of June, the first day of July through the thirtieth day of September, and the first day of October through the thirty-first day of December.

Source: Laws 1976, LB 987, § 83; Laws 1979, LB 162, § 4; Laws 1983, LB 479, § 2; Laws 1991, LB 232, § 4; Laws 1994, LB 872, § 4; Laws 1994, LB 1243, § 5; Laws 2000, LB 1021, § 5; Laws 2001, LB 242, § 8; Laws 2005, LB 242, § 33.

49-1483.01 Repealed. Laws 2005, LB 242, § 70.

49-1483.03 Lobbyist or principal; special report required; when; late filing fee.

(1) Any lobbyist or principal who receives or expends more than five thousand dollars for lobbying purposes during any calendar month in which the Legislature is in session shall, within fifteen days after the end of such calendar month, file a special report disclosing for that calendar month all information required by section 49-1483. All information disclosed in a special report shall also be disclosed in the next quarterly report required to be filed. The requirement to file a special report shall not apply to a receipt or expenditure for lobbyist fees for lobbying services which have otherwise been disclosed in the lobbyist's application for registration.

(2) Any lobbyist who fails to file a special report required by this section with the Clerk of the Legislature or the commission shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such lobbyist shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the receipts and expenditures which were required to be reported, not to exceed ten percent of the amount of the receipts and expenditures which were required to be reported.

Source: Laws 1994, LB 872, § 5; Laws 1994, LB 1243, § 6; Laws 1996, LB 1263, § 6; Laws 1999, LB 416, § 17; Laws 2007, LB434, § 4.

49-1486 Registration of lobbyists; period valid.

The registration of a lobbyist shall be valid for a period commencing with the filing of any registration as required by section 49-1480 and ending at the end of the calendar year for which the lobbyist registered unless the registration is renewed as provided by section 49-1480.01 or the registration is terminated prior to the end of the calendar year in the manner prescribed by rules and regulations adopted and promulgated by the commission.

Source: Laws 1976, LB 987, § 86; Laws 1977, LB 4, § 2; Laws 1994, LB 872, § 9; Laws 1994, LB 1243, § 10; Laws 2005, LB 242, § 34.

49-1488.01 Statements; late filing fee; reduction or waiver; when.

(1) Every lobbyist who fails to file a quarterly statement or a statement of activity with the Clerk of the Legislature, pursuant to sections 49-1483 and 49-1488, shall pay to the commission a late filing fee of twenty-five dollars for each day any of such statements are not filed in violation of such sections but not to exceed seven hundred fifty dollars per statement.

(2) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section may apply to the commission for relief. The commission by order may reduce the amount of the late filing fee imposed upon such lobbyist if he or she shows the commission that (a) the circumstances indicate no intent to file late, (b) the lobbyist has not been required to pay a late filing fee for two years prior to the time the filing of the statement was due, (c) the late filing of the statement shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fee would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(3) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section who qualifies for an exemption to the filing of quarterly statements pursuant to subsection (5) of section 49-1483 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and the person shall not be required to make a showing as provided by subsection (2) of this section.

Source: Laws 1991, LB 232, § 7; Laws 1994, LB 872, § 11; Laws 1994, LB 1243, § 12; Laws 1998, LB 632, § 6; Laws 1999, LB 416, § 18; Laws 2005, LB 242, § 35.

(d) CONFLICTS OF INTEREST

49-1494 Candidates for elective office; statement of financial interest; filing; time; where; effect; supplementary statements.

(1) An individual who files to appear on the ballot for election to an elective office specified in section 49-1493 shall:

(a) File a statement of financial interests for the preceding calendar year at the same time and with the same official with whom the individual files for office; and

(b) File a copy of the statement with the commission within five days after filing for office.

(2) Candidates for the elective offices specified in section 49-1493 who qualify other than by filing shall file a statement for the preceding calendar year with the commission within fifteen days after becoming a candidate or being appointed to that elective office.

(3) A filing to appear on the ballot shall not be accepted by a filing official unless a statement is properly filed.

(4) A statement of financial interests shall be preserved for a period of not less than five years by the commission and not less than eighteen months by the officials other than the commission with whom it is filed.

(5) This section does not apply to a person who has already filed a statement for the preceding calendar year.

(6) If the candidate for an elective office specified in section 49-1493 files to appear on the ballot for election prior to January 1 of the year in which the election is held, the candidate shall file supplementary statements with the appropriate filing officials on or before April 1 of the year in which the election is held covering the preceding calendar year.

Source: Laws 1976, LB 987, § 94; Laws 1983, LB 479, § 3; Laws 2001, LB 242, § 10; Laws 2005, LB 242, § 36.

49-1496 Statement of financial interests; form; contents; enumerated.

(1) The statement of financial interests filed pursuant to sections 49-1493 to 49-14,104 shall be on a form prescribed by the commission.

(2) Individuals required to file under sections 49-1493 to 49-1495 shall file the following information for themselves:

(a) The name and address of and the nature of association with any business with which the individual was associated;

(b) The name and address of any entity in which a position of trustee was held;

(c) The name, address, and nature of business of a person or government body from whom any income in the value of one thousand dollars or more was received and the nature of the services rendered, except that the identification of patrons, customers, patients, or clients of such person from which employment income was received is not required;

(d) A description, but not the value, of the following, if the fair market value thereof exceeded one thousand dollars:

(i) The nature and location of all real property in the state, except the residence of the individual;

(ii) The depository of checking and savings accounts;

(iii) The issuer of stocks, bonds, and government securities; and

(iv) A description of all other property owned or held for the production of income, except property owned or used by a business with which the individual was associated;

(e) The name and address of each creditor to whom the value of one thousand dollars or more was owed or guaranteed by the individual or a member of the individual's immediate family, except for the following:

(i) Accounts payable;

(ii) Debts arising out of retail installment transactions;

(iii) Loans made by financial institutions in the ordinary course of business;

(iv) Loans from a relative; and

(v) Land contracts that have been properly recorded with the county clerk or the register of deeds;

(f) The name, address, and occupation or nature of business of any person from whom a gift in the value of more than one hundred dollars was received, a description of the gift and the circumstances of the gift, and the monetary value category of the gift, based on a good faith estimate by the individual, reported in the following categories:

(i) $100.01 - $200;

(ii) $200.01 - $500;

(iii) $500.01 - $1,000; and

(iv) $1,000.01 or more; and

(g) Such other information as the individual or the commission deems necessary, after notice and hearing, to carry out the purposes of the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 96; Laws 1980, LB 535, § 17; Laws 1993, LB 121, § 307; Laws 2000, LB 1021, § 8; Laws 2005, LB 242, § 37.

49-1497 Financial institution, defined; irrevocable trust; how treated.

(1) For purposes of section 49-1496, financial institution means:

(a) A bank or banking corporation as defined in section 8-101;

(b) A federal bank or branch bank;

(c) An insurance company providing a loan on an insurance policy;

(d) A small loan company;

(e) A state or federal savings and loan association or credit union; or

(f) The federal government or any political subdivision thereof.

(2) The res or the income of an irrevocable trust of a member of the individual's immediate family is not required to be reported pursuant to section 49-1496.

Source: Laws 1976, LB 987, § 97; Laws 2005, LB 242, § 38.

49-1499 Legislature; discharge of official duties; potential conflict; actions required.

(1) A member of the Legislature 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:

(a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict, and if he or she will not abstain from voting, deliberating, or taking other action on the matter, the statement shall state why, despite the potential conflict, he or she intends to vote or otherwise participate; and

(b) Deliver a copy of the statement to the commission and to the Speaker of the Legislature who shall cause the statement to be filed with the Clerk of the Legislature to be held as a matter of public record.

(2) Nothing in this section shall prohibit any member of the Legislature from voting, deliberating, or taking other action on any matter that comes before the Legislature.

(3) The member of the Legislature may abstain from voting, deliberating, or taking other action on the matter on which the potential conflict exists. He or she may have the reasons for the abstention recorded in the Legislative Journal.

Source: Laws 1976, LB 987, § 99; Laws 1981, LB 134, § 8; Laws 1992, LB 556, § 11; Laws 1995, LB 434, § 9; Laws 2001, LB 242, § 12; Laws 2005, LB 242, § 39.

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

49-1499.02 Executive branch; discharge of official duties; potential conflict; actions required.

(1) An official or employee of the executive branch of state government 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:

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

(b) Deliver a copy of the statement to the commission and to his or her immediate superior, if any, who shall assign the matter to another. If the immediate superior does not assign the matter to another or if there is no immediate superior, the official or employee 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.

(2) This section does not prevent such a person from (a) 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 or (b) making or participating in the making of a governmental decision if the potential conflict of interest is based upon a business association and the business association exists only as the result of his or her position on a commodity board. A person acting pursuant to subdivision (a) of this subsection shall report the occurrence to the commission.

(3) For purposes of this section, commodity board means only the following:

(a) Corn Development, Utilization, and Marketing Board;

(b) Nebraska Dairy Industry Development Board;

(c) Grain Sorghum Development, Utilization, and Marketing Board;

(d) Nebraska Wheat Development, Utilization, and Marketing Board;

(e) Dry Bean Commission;

(f) Nebraska Potato Development Committee; and

(g) Nebraska Poultry and Egg Development, Utilization, and Marketing Committee.

Source: Laws 2001, LB 242, § 13; Laws 2005, LB 242, § 41.

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.

49-1499.04 Political subdivision; employment of family member; when; exception.

(1) An official or employee of a political subdivision may employ or recommend or supervise the employment of an immediate family member if (a) he or she does not abuse his or her official position as described in section 49-1499.05, (b) he or she makes a full disclosure on the record to the governing body of the political subdivision and a written disclosure to the person in charge of keeping records for the governing body, and (c) the governing body of the political subdivision approves the employment or supervisory position.

(2) No official or employee shall employ an immediate family member (a) without first having made a reasonable solicitation and consideration of applications for such employment, (b) who is not qualified for and able to perform the duties of the position, (c) for any unreasonably high salary, or (d) who is not required to perform the duties of the position.

(3) No official or employee of a political subdivision shall terminate the employment of another employee so as to make funds or a position available for the purpose of hiring an immediate family member.

(4) This section does not apply to an immediate family member of an official or employee who (a) was previously employed in a position subject to this section prior to the election or appointment of the official or employee or (b) was employed in a position subject to provisions similar to this section prior to September 1, 2001.

(5) Prior to, upon, or as soon as reasonably possible after the official date of taking office, a newly elected or appointed official or employee shall make a full disclosure of any immediate family member employed in a position subject to subdivision (4)(a) or (b) of this section.

Source: Laws 2001, LB 242, § 16; Laws 2005, LB 242, § 43.

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.

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.

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.

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.

49-14,102 Contracts with government bodies; procedure; purpose.

(1) Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.

(2) For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.

(3) No contract may be divided for the purpose of evading the requirements of this section.

(4) This section shall not apply to a contract when the public official or public employee does not in any way represent either party in the transaction.

(5) This section prohibits public officials and public employees from engaging in certain activities under circumstances creating a substantial conflict of interest. This section is not intended to penalize innocent persons, and a contract shall not be absolutely void by reason of this section.

Source: Laws 1976, LB 987, § 102; Laws 2005, LB 242, § 46.

49-14,103 Contract; conflict of interest; voidable; decree.

(1) A contract involving a prohibited conflict of interest under section 49-14,102 shall be voidable only by decree of a court of proper jurisdiction in an action brought by any citizen of this state as to any person that entered into the contract or took assignment thereof, with actual knowledge of the prohibited conflict. In the case of a person other than an individual, the actual knowledge must be that of an individual or body finally approving the contract for the person.

(2) An action to void any contract shall be brought within one year after discovery of circumstances suggesting the existence of a violation.

(3) Any such decree voiding such contract may, to meet the ends of justice, provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the state or political subdivision has benefited thereby.

(4) Sections 49-14,102 and 49-14,103 shall not apply to a contract for labor which is negotiated or is being negotiated pursuant to the laws of this state.

Source: Laws 1976, LB 987, § 103; Laws 2005, LB 242, § 47.

49-14,103.01 Officer, defined; interest in contract prohibited; when.

(1) For purposes of sections 49-14,103.01 to 49-14,103.06, unless the context otherwise requires, officer means (a) a member of the board of directors of a natural resources district, (b) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, (c)

any elected county, school district, educational service unit, city, or village official, and (d) a member of any board of directors or trustees of a hospital district as provided by the Nebraska Local Hospital District Act or a county hospital as provided by sections 23-3501 to 23-3519. Officer does not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(2) Except as provided in section 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of such contract with actual knowledge of the prohibited conflict.

(3) An action to have a contract declared void under this section may be brought by the county attorney, the governing body, or any resident within the jurisdiction of the governing body and shall be brought within one year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

(4) The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in section 49-1408 with the business involved in the contract or (b) will receive a direct pecuniary fee or commission as a result of the contract.

(5) The prohibition in this section does not apply if the contract is an agenda item approved at a board meeting and the interested officer:

(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(b) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

(6) An officer who (a) has no business association as defined in section 49-1408 with the business involved in the contract or (b) will not receive a direct pecuniary fee or commission as a result of the contract shall not be deemed to have an interest within the meaning of this section.

(7) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than five percent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(8) If an officer's parent, spouse, or child is an employee of his or her governing body, the officer may vote on all issues of the contract which are

generally applicable to (a) all employees or (b) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

(9) Section 49-14,102 does not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06.

(10)(a) This section does not prohibit a director of a natural resources district from acting as a participant in any of the conservation or other general district programs which are available for like participation to other residents and landowners of the district or from granting, selling, or otherwise transferring to such district any interest in real property necessary for the exercise of its powers and authorities if the cost of acquisition thereof is equal to or less than that established by a board of three credentialed real property appraisers or by a court of competent jurisdiction in an eminent domain proceeding.

(b) District payments to a director of a natural resources district of the market value for real property owned by him or her and needed for district projects, or for cost sharing for conservation work on such director's land or land in which a director may have an interest, shall not be deemed subject to this section.

Source: Laws 1986, LB 548, § 2; Laws 1987, LB 134, § 8; Laws 1987, LB 688, § 10; Laws 1990, LB 1153, § 55; Laws 1991, LB 203, § 2; Laws 1994, LB 1107, § 2; Laws 2001, LB 242, § 21; Laws 2005, LB 242, § 48; Laws 2006, LB 778, § 5.

Cross References

Nebraska Local Hospital District Act, see section 23-3528.

49-14,103.02 Contract with officer; information required; ledger maintained.

(1) The person charged with keeping records for each governing body shall maintain separately from other records a ledger containing the information listed in subdivisions (1)(a) through (e) of this section about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to section 49-14,103.01. Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

(a) Names of the contracting parties;

(b) Nature of the interest of the officer in question;

(c) Date that the contract was approved by the governing body;

(d) Amount of the contract; and

(e) Basic terms of the contract.

(2) The information supplied relative to the contract shall be provided no later than ten days after the contract has been signed by both parties. The ledger kept pursuant to this section shall be available for public inspection during the normal working hours of the office in which it is kept.

Source: Laws 1986, LB 548, § 3; Laws 2001, LB 242, § 22; Laws 2005, LB 242, § 49.

49-14,103.03 Open account with officer; how treated.

(1) An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to sections 49-14,103.01 to 49-14,103.06.

(2) The statement required to be filed by section 49-14,103.02 shall be filed within ten days after such account is opened. Thereafter, the person charged with keeping records for such governing body shall maintain a running account of amounts purchased on the open account.

(3) Purchases made from petty cash or a petty cash fund shall not be subject to sections 49-14,103.01 to 49-14,103.06.

Source: Laws 1986, LB 548, § 4; Laws 2005, LB 242, § 50.

49-14,103.04 Violations; penalties.

(1) Any officer who knowingly violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class III misdemeanor.

(2) Any officer who negligently violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class V misdemeanor.

Source: Laws 1986, LB 548, § 5; Laws 2005, LB 242, § 51.

49-14,104 Official or full-time employee of executive branch; not to represent a person or act as an expert witness; when; violation; penalty.

(1) An official or full-time employee of the executive branch of state government shall not represent a person or act as an expert witness for compensation before a government body when the action or nonaction of the government body is of a nonministerial nature, except in a matter of public record in a court of law.

(2) This prohibition shall not apply to an official or employee acting in an official capacity.

(3) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 104; Laws 1977, LB 41, § 56; Laws 2005, LB 242, § 52.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

49-14,112 Commission; members; vacancy; how filled.

(1) When a vacancy occurs by expiration of a term of office or otherwise, which vacancy is subject to an appointment from a list pursuant to the provisions of section 49-14,105, such list shall be submitted to the Governor or the Secretary of State not later than thirty days after such vacancy occurs.

(2) If the appointment is subject to a list pursuant to subdivision (1)(a) of section 49-14,105, and the Legislature is not in session, such list may be submitted by the Executive Board of the Legislative Council.

(3) The Governor or the Secretary of State shall make his or her appointment within thirty days of receiving the list provided for in section 49-14,105 unless two or more of the individuals whose names appear on the list are unwilling to withdraw from activities or resign from positions as required by section 49-14,114. If such individuals are unwilling to so withdraw or resign, the Governor or the Secretary of State shall notify the provider of the list. Within thirty days after such notification is received, a new list of names of at least five individuals shall be submitted to the Governor or Secretary of State. Such new list shall not include the individuals included in the initial list who were

unwilling to withdraw from activities or resign from positions as required by section 49-14,114.

(4) The Governor or Secretary of State shall appoint an individual from the new list within thirty days of receipt unless two or more of the individuals whose names appear on the second list are unwilling to withdraw from activities or resign from positions as required by section 49-14,114. In such event, the Governor or Secretary of State shall appoint an individual of his or her own choosing within thirty days after the receipt of the new list.

(5) If the Governor or Secretary of State does not receive the initial list within thirty days of a vacancy, the Governor or Secretary of State may make an appointment of his or her own choosing. If the Governor or Secretary of State does not receive the second list within thirty days after notification to the provider of the list, the Governor or Secretary of State may make an appointment of his or her own choosing.

(6) All appointments of the Governor or Secretary of State shall be subject to sections 49-14,106 and 49-14,110 and subsection (2) of section 49-14,111.

(7) No individual appointed to the commission shall serve more than one full six-year term on the commission.

Source: Laws 1976, LB 987, § 112; Laws 1979, LB 54, § 6; Laws 1990, LB 534, § 6; Laws 2005, LB 242, § 53.

49-14,115 Member or employee of commission; confidential information; disclosure, when; violation; penalty.

No member or employee of the commission shall disclose or discuss any statements, reports, records, testimony, or other information or material deemed confidential by the Nebraska Political Accountability and Disclosure Act unless ordered by a court or except as necessary in the proper performance of such member's or employee's duties under the act. Any member who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 115; Laws 1977, LB 41, § 57; Laws 2005, LB 242, § 54.

49-14,120 Commission; members; compensation.

The Secretary of State shall receive no compensation for services as a commission member other than any salary allowed by law, but shall be reimbursed for actual and necessary expenses. The appointed members shall be paid a per diem of fifty dollars for each day actually and necessarily engaged in the performance of their duties as members of such commission in addition to such expense allowance. Reimbursement for expenses shall be as provided in sections 81-1174 to 81-1177.

Source: Laws 1976, LB 987, § 120; Laws 1981, LB 204, § 88; Laws 2005, LB 242, § 55.

49-14,123 Commission; duties.

In addition to any other duties prescribed by law, the commission shall:

(1) Prescribe and publish, after notice and opportunity for public comment, rules and regulations to carry out the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act pursuant to the Administrative Procedure Act;

(2) Prescribe forms for statements and reports required to be filed pursuant to the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by the acts and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of the acts;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission and special reports and technical studies to further the purposes of the acts;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of the acts upon the request of a person or government body directly covered or affected by the acts. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or government body who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person or government body in the request for the opinion;

(11) Act as the primary civil enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act and the rules or regulations promulgated thereunder and act as the primary civil enforcement agency for violations of the Campaign Finance Limitation Act and the rules or regulations promulgated thereunder;

(12) Receive all late filing fees, civil penalties, and interest imposed pursuant to the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act, seek the return of any amount as provided in section 32-1606, and seek the repayment of any amount as provided in section 32-1607 and remit all such funds to the State Treasurer for credit to the Campaign Finance Limitation Cash Fund; and

(13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

Source: Laws 1976, LB 987, § 123; Laws 1981, LB 545, § 13; Laws 1981, LB 134, § 9; Laws 1983, LB 479, § 5; Laws 1992, LB 556, § 12; Laws 1994, LB 872, § 12; Laws 1994, LB 1243, § 14; Laws 1997, LB 420, § 20; Laws 1997, LB 758, § 3; Laws 2000, LB 438, § 10; Laws 2005, LB 242, § 56; Laws 2007, LB464, § 3.

Cross References

Administrative Procedure Act, see section 84-920.
Campaign Finance Limitation Act, see section 32-1601.

49-14,123.02 Repealed. Laws 2005, LB 242, § 70.

49-14,124 Alleged violation; preliminary investigation by commission; powers; notice.

(1) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Nebraska Political Accountability and Disclosure Act, or any rule or regulation adopted and promulgated thereunder, upon:

(a) The receipt of a complaint signed under oath which contains at least a reasonable belief that a violation has occurred;

(b) The recommendation of the executive director; or

(c) The commission's own motion.

(2) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Campaign Finance Limitation Act, or any rule or regulation promulgated thereunder, upon:

(a) The recommendation of the executive director; or

(b) The commission's own motion.

(3) For purposes of conducting preliminary investigations under either the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act, the commission shall have the powers possessed by the courts of this state to issue subpoenas, and the district court shall have jurisdiction to enforce such subpoenas.

(4) The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation within five days after the commencement of the investigation.

(5) Within fifteen days after the filing of a sworn complaint by a person alleging a violation, and every thirty days thereafter until the matter is terminated, the executive director shall notify the complainant and the alleged violator of the action taken to date by the commission together with the reasons for such action or for nonaction.

(6) Each governing body shall cooperate with the commission in the conduct of its investigations.

Source: Laws 1976, LB 987, § 124; Laws 1997, LB 49, § 10; Laws 1997, LB 420, § 21; Laws 1999, LB 578, § 1; Laws 2005, LB 242, § 57; Laws 2006, LB 188, § 16.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,124.01 Preliminary investigation; confidential; exception.

All commission proceedings and records relating to preliminary investigations shall be confidential until a final determination is made by the commission unless the person alleged to be in violation of the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act requests that the proceedings be public. If the commission determines that there was no violation of either act or any rule or regulation adopted and promulgated under either act, the records and actions relative to the investiga-

tion and determination shall remain confidential unless the alleged violator requests that the records and actions be made public. If the commission determines that there was a violation, the records and actions shall be made public as soon as practicable after the determination is made.

Source: Laws 2005, LB 242, § 58.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,124.02 Commission; possible criminal violation; referral to Attorney General; duties of Attorney General.

At any time after the commencement of a preliminary investigation, the commission may refer the matter of a possible criminal violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act to the Attorney General for consideration of criminal prosecution. The fact of the referral shall not be subject to the confidentiality provisions of section 49-14,124.01. The Attorney General shall determine if a matter referred by the commission will be criminally prosecuted. If the Attorney General determines that a matter will be criminally prosecuted, he or she shall advise the commission in writing of the determination. If the Attorney General determines that a matter will not be criminally prosecuted, he or she shall advise the commission in writing of the determination. The fact of the declination to criminally prosecute shall not be subject to the confidentiality provisions of section 49-14,124.01.

Source: Laws 2007, LB464, § 4.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,125 Preliminary investigation; terminated, when; violation; effect; powers of commission; subsequent proceedings; records.

(1) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is no probable cause for belief that a person has violated the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act or any rule or regulation adopted and promulgated thereunder or if the commission determines that there is insufficient evidence to reasonably believe that the person could be found to have violated either act, the commission shall terminate the investigation and so notify the complainant and the person who had been under investigation.

(2) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is probable cause for belief that the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act or a rule or regulation adopted and promulgated thereunder has been violated and if the commission determines that there is sufficient evidence to reasonably believe that the person could be found to have violated either act, the commission shall initiate appropriate proceedings to determine whether there has in fact been a violation. The commission may appoint a hearing officer to preside over the proceedings.

(3) All proceedings of the commission pursuant to this section shall be by closed session attended only by those persons necessary to the investigation of the alleged violation, unless the person alleged to be in violation of either act or

any rule or regulation adopted and promulgated thereunder requests an open session.

(4) The commission shall have the powers possessed by the courts of this state to issue subpoenas in connection with proceedings under this section, and the district court shall have jurisdiction to enforce such subpoenas.

(5) All testimony shall be under oath which shall be administered by a member of the commission, the hearing officer, or any other person authorized by law to administer oaths and affirmations.

(6) Any person who appears before the commission shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state.

(7) All witnesses summoned before the commission shall receive reimbursement as paid in like circumstances in the district court.

(8) Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby shall be notified and may appear personally before the commission on that person's own behalf or file a written statement for incorporation into the record of the proceeding.

(9) The commission shall cause a record to be made of all proceedings pursuant to this section.

(10) At the conclusion of proceedings concerning an alleged violation, the commission shall deliberate on the evidence and determine whether there has been a violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 125; Laws 1981, LB 134, § 10; Laws 1997, LB 420, § 22; Laws 1999, LB 578, § 2; Laws 2005, LB 242, § 59; Laws 2006, LB 188, § 17.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,126 Commission; violation; orders; civil penalty.

(1) The commission, upon finding that there has been a violation of the Nebraska Political Accountability and Disclosure Act or any rule or regulation promulgated thereunder, may issue an order requiring the violator to do one or more of the following:

(a) Cease and desist violation;

(b) File any report, statement, or other information as required; or

(c) Pay a civil penalty of not more than two thousand dollars for each violation of the act, rule, or regulation.

(2) If the commission finds a violation of the Campaign Finance Limitation Act, the commission shall assess a civil penalty as required under section 32-1604, 32-1606.01, or 32-1612.

Source: Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11; Laws 1997, LB 420, § 23; Laws 1999, LB 416, § 19; Laws 2006, LB 188, § 18; Laws 2007, LB464, § 5.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,127 Mandamus to compel civil action; when.

Any individual who believes that a violation of the Nebraska Political Accountability and Disclosure Act has occurred may, after exhausting the administrative remedies provided by the act, bring a civil action to compel the commission to fulfill its responsibilities under the act, or may bring a civil action against any person or persons to compel compliance with the act.

Source: Laws 1976, LB 987, § 127; Laws 2005, LB 242, § 60.

49-14,130 Repealed. Laws 2005, LB 242, § 70.

49-14,132 Filings; limitation of use.

Information copied from campaign statements, registration forms, activity reports, statements of financial interest, and other filings required by the Nebraska Political Accountability and Disclosure Act shall not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that (1) the name and address of any political committee, corporation, labor organization, or industry, trade, or professional association may be used for soliciting contributions from such committee, corporation, organization, or association and (2) the use of information copied or otherwise obtained from statements, forms, reports, and other filings required by the act in newspapers, magazines, books, or other similar communications is permissible as long as the principal purpose of using such information is not to communicate any contributor information listed thereon for the purpose of soliciting contributions or for other commercial purposes.

Source: Laws 1976, LB 987, § 132; Laws 1981, LB 134, § 12; Laws 2005, LB 242, § 61.

49-14,133 Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney.

The Attorney General has jurisdiction to enforce the criminal provisions of the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act. The county attorney of the county in which a violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act occurs shall have concurrent jurisdiction.

Source: Laws 1976, LB 987, § 133; Laws 1981, LB 134, § 13; Laws 1997, LB 758, § 4; Laws 2007, LB464, § 6.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,135 Violation of confidentiality; perjury; penalty.

(1) Except as otherwise provided in the Nebraska Political Accountability and Disclosure Act, any person who violates the confidentiality of a commission proceeding pursuant to the act shall be guilty of a Class III misdemeanor.

(2) A person who willfully affirms or swears falsely in regard to any material matter before a commission proceeding pursuant to the act shall be guilty of a Class IV felony.

Source: Laws 1976, LB 987, § 135; Laws 1977, LB 41, § 59; Laws 2005, LB 242, § 62.

49-14,136 Statute of limitations.

Prosecution for violation of the Nebraska Political Accountability and Disclosure Act shall be commenced within three years after the date on which the violation occurred.

Source: Laws 1976, LB 987, § 136; Laws 2005, LB 242, § 63.

49-14,137 Discipline of public officials or employees; effect of act.

The penalties prescribed in the Nebraska Political Accountability and Disclosure Act do not limit the power of the Legislature to discipline its own members or impeach a public official and do not limit the power of agencies or commissions to discipline officials or employees.

Source: Laws 1976, LB 987, § 137; Laws 2005, LB 242, § 64.

49-14,138 Local laws of political subdivisions; effect of act.

No political subdivision or municipality within the State of Nebraska in which candidates for their elective offices or elected officials are subject to the requirements of the Nebraska Political Accountability and Disclosure Act shall require compliance with local provisions governing campaign receipts and expenditures or financial disclosures which are different from those established by the act.

Source: Laws 1976, LB 987, § 138; Laws 2005, LB 242, § 65.

49-14,139 Forms; distribution.

The county clerk or election commissioner in each county shall distribute forms prepared by the commission to any person required to file any statement or report pursuant to the Nebraska Political Accountability and Disclosure Act other than forms or statements under sections 49-1480 to 49-1492.01. Such forms shall include, but not be limited to, filing forms and instructions, statements of financial interest, and campaign committee organization forms.

Source: Laws 1983, LB 479, § 6; Laws 2005, LB 242, § 66.

49-14,140 Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.

The Nebraska Accountability and Disclosure Commission Cash Fund is hereby created. The fund shall consist of funds received by the commission pursuant to sections 49-1449.01, 49-1470, 49-1480.01, 49-1482, 49-1495, 49-14,123, and 49-14,123.01. The fund shall not include late filing fees or civil penalties assessed and collected by the commission. The fund shall be used by the commission in administering the Nebraska Political Accountability and Disclosure Act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Nebraska Accountability and Disclosure Commission Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 815, § 4; Laws 1994, LB 872, § 13; Laws 1994, LB 1066, § 40; Laws 1994, LB 1243, § 15; Laws 2007, LB527, § 5; Laws 2009, First Spec. Sess., LB3, § 25.
Effective date November 21, 2009.

Cross References

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

ARTICLE 15
NEBRASKA SHORT FORM ACT

Section

49-1501 Act, how cited.

Sections 49-1501 to 49-1562 shall be known and may be cited as the Nebraska Short Form Act.

Source: Laws 1988, LB 475, § 1; Laws 2010, LB712, § 41.
Operative date July 15, 2010.

49-1562 Powers relating to rights of survivorship and beneficiary designations.

An agent or attorney in fact under a power of attorney, whether the power of attorney is durable or nondurable, may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent or attorney in fact the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) Create or change rights of survivorship; or

(2) Create or change a beneficiary designation.

Source: Laws 2010, LB712, § 42.
Operative date July 15, 2010.

CHAPTER 50
LEGISLATURE

Article.
1. General Provisions. 50-114.05.
4. Legislative Council. 50-401.01 to 50-448.
5. Statewide Strategic Plan for Biotechnology. 50-501.
12. Legislative Performance Audit Act. 50-1203 to 50-1215.
13. Review of Boards and Commissions. 50-1302.
14. Legislature's Planning Committee. 50-1401 to 50-1404.

ARTICLE 1
GENERAL PROVISIONS

Section
50-114.05. Clerk of the Legislature Cash Fund; created; use; investment.

50-114.05 Clerk of the Legislature Cash Fund; created; use; investment.

The Clerk of the Legislature Cash Fund is hereby created. The fund shall consist of funds received by the Clerk of the Legislature pursuant to sections 49-1480.01 and 49-1482. The fund shall be used by the Clerk of the Legislature to perform the duties required by sections 49-1480 to 49-1492.01, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Clerk of the Legislature 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 1994, LB 872, § 14; Laws 1994, LB 1243, § 16; Laws 1995, LB 7, § 53; Laws 2005, LB 242, § 67; Laws 2009, First Spec. Sess., LB3, § 26.
Effective date November 21, 2009.

Cross References

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

ARTICLE 4
LEGISLATIVE COUNCIL

Section
50-401.01. Legislative Council; executive board; members; selection; powers and duties.
50-416. Legislative Research; Director of Research.
50-417.01. Repealed. Laws 2006, LB 1019, § 23.
50-417.02. Act, how cited.
50-417.03. Terms, defined.
50-417.04. Law enforcement officers retirement plans survey; purpose; report; actuarial survey.
50-417.05. Political subdivisions and state; provide information; confidentiality.
50-417.06. State and political subdivisions; liability.
50-421. Office of Legislative Audit; Legislative Auditor.

50-401.01 Legislative Council; executive board; members; selection; powers and duties.

(1) The Legislative Council shall have an executive board, to be known as the Executive Board of the Legislative Council, which shall consist of a chairperson, a vice-chairperson, and six members of the Legislature, to be chosen by the Legislature at the commencement of each regular session of the Legislature when the speaker is chosen, and the Speaker of the Legislature. The Legislature at large shall elect two of its members from legislative districts Nos. 1, 2, 15, 21 to 30, 32, 34, and 46, two from legislative districts Nos. 3 to 14, 18, 20, 31, 39, and 45, and two from legislative districts Nos. 16, 17, 19, 33, 35 to 38, 40 to 44, and 47 to 49. The Chairperson of the Committee on Appropriations shall serve as a nonvoting ex officio member of the executive board whenever the board is considering fiscal administration.

(2) The executive board shall:

(a) Supervise all services and service personnel of the Legislature and may employ and fix compensation and other terms of employment for such personnel as may be needed to carry out the intent and activities of the Legislature or of the board, unless otherwise directed by the Legislature, including the adoption of policies by the executive board which permit (i) the purchasing of an annuity for an employee who retires or (ii) the crediting of amounts to an employee's deferred compensation account under section 84-1504. The payments to or on behalf of an employee may be staggered to comply with other law; and

(b) Appoint persons to fill the positions of Legislative Fiscal Analyst, Director of Research, Revisor of Statutes, and Legislative Auditor. The persons appointed to these positions shall have training and experience as determined by the executive board and shall serve at the pleasure of the executive board. The Legislative Performance Audit Committee shall recommend the person to be appointed Legislative Auditor. Their respective salaries shall be set by the executive board.

(3) Notwithstanding any other provision of law, the executive board may contract to obtain legal, auditing, accounting, actuarial, or other professional services or advice for or on behalf of the executive board, the Legislative Council, the Legislature, or any member of the Legislature. The providers of such services or advice shall meet or exceed the minimum professional standards or requirements established or specified by their respective professional organizations or licensing entities or by federal law. Such contracts, the deliberations of the executive board with respect to such contracts, and the

work product resulting from such contracts shall not be subject to review or approval by any other entity of state government.

Source: Laws 1937, c. 118, § 1, p. 421; Laws 1939, c. 60, § 1, p. 261; C.S.Supp.,1941, § 50-501; Laws 1943, c. 118, § 1, p. 414; R.S. 1943, § 50-401; Laws 1949, c. 168, § 1(2), p. 445; Laws 1951, c. 169, § 1, p. 655; Laws 1965, c. 310, § 1, p. 872; Laws 1967, c. 595, § 1, p. 2026; Laws 1972, LB 1129, § 1; Laws 1973, LB 485, § 3; Laws 1992, LB 898, § 1; Laws 1993, LB 579, § 2; Laws 1994, LB 1243, § 18; Laws 1997, LB 314, § 2; Laws 2001, LB 75, § 1; Laws 2003, LB 510, § 1; Laws 2006, LB 956, § 1.

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.

50-417.01 Repealed. Laws 2006, LB 1019, § 23.

50-417.02 Act, how cited.

Sections 50-417.02 to 50-417.06 shall be known and may be cited as the Law Enforcement Officers Retirement Survey Act.

Source: Laws 2007, LB328, § 12.

50-417.03 Terms, defined.

For purposes of the Law Enforcement Officers Retirement Survey Act:

(1) Committee means the Nebraska Retirement Systems Committee of the Legislature;

(2) Law enforcement officer means any police officer, sheriff, and deputy sheriff employed by a political subdivision and any conservation officer employed by the state;

(3) Political subdivision means any political subdivision of this state which employs police officers, sheriffs, or deputy sheriffs, but does not include a city of the metropolitan class, a city of the primary class, or a county containing a city of the metropolitan class; and

(4) Retirement system means the Nebraska Public Employees Retirement Systems.

Source: Laws 2007, LB328, § 13.

50-417.04 Law enforcement officers retirement plans survey; purpose; report; actuarial survey.

(1) The retirement system shall conduct a survey of the retirement plans currently in place for law enforcement officers throughout Nebraska. The retirement system shall conduct the survey and issue a report to the committee no later than October 1, 2007.

(2) At the time that the report is provided to the committee, information which supports the report shall be provided to any firm employed to conduct an actuarial survey from the information gathered by the retirement system upon the firm's request. The information provided shall not include any personal information such as the name or social security number of law enforcement officers.

(3) The survey shall include, but not be limited to, the following information:

(a) What types of retirement plans are in place for law enforcement officers; and

(b) Any other information which the retirement system or the committee deems necessary.

(4) The retirement system shall create, in consultation with the committee, a method to receive the materials required for the survey. The method shall utilize a unique identifier for each law enforcement officer, each political subdivision, and the state agency responding.

(5) The purpose of the survey is to conduct a review of the many retirement plans throughout Nebraska for law enforcement officers and to assist an actuarial firm in determining the cost to implement a defined benefit retirement plan with benefits capped at various levels between sixty and eighty percent of pay with costs separately determined for cities of the first class, cities of the second class, villages, counties, and the state.

Source: Laws 2007, LB328, § 14.

50-417.05 Political subdivisions and state; provide information; confidentiality.

Each political subdivision and the state shall provide the retirement system with such information as the retirement system deems necessary and appropriate to conduct the review required under section 50-417.04. The material to be obtained by the retirement system may include, but not be limited to, the following concerning law enforcement officers employed by the political subdivision or the state:

(1) Names;

(2) Dates of birth;

(3) Dates of hire;

(4) Taxable earnings for the prior fiscal year;

(5) Years of service;

(6) Gender;

(7) Whether or not the law enforcement officer is enrolled in a retirement plan;

(8) The type of plan the law enforcement officer is enrolled in, the required employee contribution percentage, and the employer contribution percentage, along with an indication if it is a fixed percentage or a variable contribution rate. If the law enforcement officer is enrolled in a defined contribution plan, the political subdivision or state shall also disclose the account balance attributable to employer contributions and employee contributions, excluding any balance due to rollovers from another qualified plan or attributable to voluntary employee contributions; and

(9) Any other information that the retirement system or the committee deems important to the conduct of the survey.

Any material received by the retirement system shall be considered confidential and shall not be disclosed to a third party except as provided in subsection (2) of section 50-417.04.

Source: Laws 2007, LB328, § 15.

50-417.06 State and political subdivisions; liability.

Neither the state nor any political subdivision shall be held liable for providing information requested or be responsible for the payment of the actuarial survey under the Law Enforcement Officers Retirement Survey Act.

Source: Laws 2007, LB328, § 16.

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.

50-422 Health and Human Services Committee; behavioral health insurance parity study and actuarial analysis; report.

The Health and Human Services Committee of the Legislature shall provide for an independent study and actuarial analysis of the impact of behavioral health insurance parity legislation in the State of Nebraska. A report of such study and analysis shall be submitted to the Governor, the Health and Human Services Committee of the Legislature, and the Banking, Commerce and Insurance Committee of the Legislature on or before December 1, 2006.

Source: Laws 2006, LB 1248, § 89.

50-437 Nebraska Legislative Shared Information System Cash Fund; created; investment.

There is hereby created the Nebraska Legislative Shared Information System Cash Fund, which fund shall consist of fees received from services provided by the Legislature. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Legislative Shared Information System Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 599, § 2; Laws 1995, LB 7, § 54; Laws 2009, First Spec. Sess., LB3, § 27.
Effective date November 21, 2009.

Cross References

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

50-445 State-Tribal Relations Committee; members.

The State-Tribal Relations Committee is hereby established as a special legislative committee with the intent of fostering better relationships between

the state and the federally recognized Indian tribes within the state. The Executive Board of the Legislative Council shall appoint seven members of the Legislature to the committee. The appointments shall be based on interest and knowledge. The chairperson and vice-chairperson of the State-Tribal Relations Committee shall also be designated by the executive board. All appointments shall be made within the first six days of the legislative session in odd-numbered years. Members shall serve two-year terms corresponding with legislative sessions and may be reappointed for consecutive terms. The committee shall meet as necessary to, among other things, consider, study, monitor, and review legislation that impacts state-tribal relations issues and to present draft legislation and policy recommendations to the appropriate standing committee of the Legislature.

Source: Laws 2007, LB34, § 1.

50-446 Corporate farming and ranching court rulings; legislative findings.

The Legislature finds that the ruling of the United States District Court for the District of Nebraska in Jones v. Gale, 405 F. Supp. 2d 1066, D. Neb. 2005, and subsequent rulings on appeal affirming such ruling holding Article XII, section 8, of the Constitution of Nebraska to be invalid, enjoined, or limited in application has significant implications for the future structure, development, and progress of agricultural production in Nebraska.

Source: Laws 2007, LB516, § 1.

50-447 Policy instruments advancing state interest in structure, development, and progress of agricultural production; study by Agriculture Committee; use of experts.

(1) It is the intent of the Legislature to support and facilitate a study by the Agriculture Committee of the Legislature to identify policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production.

(2) Within the limits of funds appropriated for such purpose, the Executive Board of the Legislative Council may, in coordination and cooperation with the Agriculture Committee of the Legislature, commission experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to provide assistance, specific research or reports, or presentations in order to assist the Agriculture Committee of the Legislature in carrying out the intent of the Legislature under this section.

Source: Laws 2007, LB516, § 2.

50-448 Attorney General; duties; powers.

(1) It is the intent of the Legislature that the Attorney General perform, acquire, and otherwise cause to be made available such research as may be appropriate to inform and assist the Agriculture Committee of the Legislature in identifying policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order

to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production in Nebraska.

(2) The Attorney General may contract with experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to assist the Attorney General in carrying out the intent of the Legislature under this section.

Source: Laws 2007, LB516, § 3.

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 September 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; Laws 2010, LB911, § 1.
Effective date March 4, 2010.

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 12

LEGISLATIVE PERFORMANCE AUDIT ACT

Section

50-1203 Terms, defined.

For purposes of the Legislative Performance Audit Act:

(1) Agency means any department, board, commission, or other governmental unit of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska but does not include (a) any court, (b) the Governor or his or her personal staff, (c) any political subdivision or entity thereof, or (d) any entity of the federal government;

(2) Auditor of Public Accounts means the Auditor of Public Accounts whose powers and duties are prescribed in section 84-304;

(3) Business day means a day on which state offices are open for regular business;

(4) Committee means the Legislative Performance Audit Committee;

(5) Committee report means the report released by the committee at the conclusion of a performance audit;

(6) Legislative Auditor means the Legislative Auditor appointed by the Executive Board of the Legislative Council under section 50-401.01;

(7) Majority vote means a vote by the majority of the committee's members;

(8) Performance audit means an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action. Performance audits may have a variety of objectives, including the assessment of a program's effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements;

(9) Preaudit inquiry means an investigatory process during which the section gathers and examines evidence to determine if a performance audit topic has merit;

(10) Section means the Legislative Performance Audit Section; and

(11) Working papers means those documents containing evidence to support the section's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the section during the performance audit or preaudit inquiry.

Source: Laws 1992, LB 988, § 3; Laws 2003, LB 607, § 5; Laws 2004, LB 1118, § 1; Laws 2006, LB 588, § 1; Laws 2006, LB 956, § 3.

50-1204 Legislative Performance Audit Committee; established; membership; officers; Legislative Performance Audit Section; established; duties.

(1) The Legislative Performance Audit Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in the Legislative Performance Audit Act. The committee shall be composed 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 four other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislative Performance Audit Committee includes adequate geographic representation. The chairperson and vice-chairperson of the Legislative Performance Audit Committee shall be elected by majority vote. The committee shall be subject to all rules prescribed by the Legislature. The

committee shall be reconstituted at the beginning of each Legislature and shall meet as needed.

(2) The Legislative Performance Audit Section is established. The section shall be administered by the Legislative Auditor, who shall ensure that performance audit work conducted by the section conforms with performance audit standards contained in the Government Auditing Standards (2007 revision) as required in section 50-1205.01. The section shall be composed of the Legislative Auditor and other employees of the Legislature employed to conduct performance audits. The section shall be the custodian of all records generated by the committee or section except as provided by section 50-1213, subsection (11) of section 77-2711, or subdivision (10)(a) of section 77-27,119. The section shall inform the Legislative Fiscal Analyst of its activities and consult with him or her as needed. The section shall operate under the general direction of the committee.

Source: Laws 1992, LB 988, § 4; Laws 2003, LB 607, § 6; Laws 2006, LB 588, § 2; Laws 2006, LB 956, § 4; Laws 2008, LB822, § 1.

50-1205 Committee; duties.

The committee shall:

(1) Adopt, by majority vote, procedures consistent with the Legislative Performance Audit Act to govern the business of the committee and the conduct of performance audits;

(2) Ensure that performance audits done by the committee are not undertaken based on or influenced by special or partisan interests;

(3) Review performance audit requests and select, by majority vote, agencies or agency programs for performance audit;

(4) Review, amend, if necessary, and approve a scope statement and an audit plan for each performance audit;

(5) Respond to inquiries regarding performance audits;

(6) Inspect or approve the inspection of the premises, or any parts thereof, of any agency or any property owned, leased, or operated by an agency as frequently as is necessary in the opinion of the committee to carry out a performance audit or preaudit inquiry;

(7) Inspect and examine, or approve the inspection and examination of, the records and documents of any agency as a part of a performance audit or preaudit inquiry;

(8) Administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses either residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;

(9) Review completed performance audit reports prepared by the section, together with comments from the evaluated agency, and adopt recommendations and incorporate them into a committee report;

(10) Release the committee report to the public and distribute it to the Legislature with or without benefit of a public hearing;

(11) Hold a public hearing, at the committee's discretion, for the purpose of receiving testimony prior to issuance of the committee report;

(12) Establish a system to ascertain and monitor an agency's implementation of the recommendations contained in the committee report and compliance with any statutory changes resulting from the recommendations;

(13) Issue an annual report each September, to be prepared by the Legislative Auditor and approved by the committee, summarizing recommendations made pursuant to reports of performance audits during the previous fiscal year and the status of implementation of those recommendations;

(14) Consult with the Legislative Auditor regarding the staffing and budgetary needs of the section and assist in presenting budget requests to the Appropriations Committee of the Legislature;

(15) Approve or reject, within the budgetary limits of the section, contracts to retain consultants to assist with performance audits requiring specialized knowledge or expertise. Requests for consultant contracts shall be approved by the Legislative Auditor and presented to the Legislative Performance Audit Committee by the Legislative Auditor. A majority vote shall be required to approve consultant contract requests. For purposes of section 50-1213, subsection (11) of section 77-2711, and subsections (10) through (13) of section 77-27,119, any consultant retained to assist with a performance audit or preaudit inquiry shall be considered an employee of the section during the course of the contract; and

(16) At its discretion, and with the agreement of the Auditor of Public Accounts, conduct joint fiscal or performance audits with the Auditor of Public Accounts. The details of any joint audit shall be agreed upon in writing by the committee and the Auditor of Public Accounts.

Source: Laws 1992, LB 988, § 5; Laws 2003, LB 607, § 7; Laws 2006, LB 588, § 3; Laws 2006, LB 956, § 5.

50-1205.01 Performance audits; standards.

Performance audits done under the terms of the Legislative Performance Audit Act shall be conducted in accordance with the generally accepted government auditing standards for performance audits contained in the Government Auditing Standards (2007 Revision), published by the Comptroller General of the United States, Government Accountability Office.

Source: Laws 2003, LB 607, § 8; Laws 2004, LB 1118, § 2; Laws 2006, LB 588, § 4; Laws 2008, LB822, § 2.

50-1206 Performance audits; how initiated; procedure.

(1) Requests for performance audits may be made by the Governor, any other constitutional officer of the State of Nebraska, a legislator, the Legislative Auditor, the Legislative Fiscal Analyst, or the Director of Research of the Legislature.

(2) Performance audit requests shall be submitted to the committee chairperson or Legislative Auditor by letter or on a form developed by the Legislative Auditor.

(3) When considering a performance audit request, if the committee determines that the request has potential merit but insufficient information is available, it may, by majority vote, instruct the Legislative Auditor to conduct a preaudit inquiry.

(4) Upon completion of the preaudit inquiry, the committee chairperson shall place the request on the agenda for the committee's next meeting and shall notify the request sponsor of that action.

Source: Laws 1992, LB 988, § 6; Laws 2003, LB 607, § 9; Laws 2006, LB 956, § 6; Laws 2008, LB822, § 3.

50-1207 Performance audits; criteria.

The committee may develop criteria to be used to screen requests for performance audits. The committee shall consult with the Legislative Auditor in the application of the screening criteria.

Source: Laws 1992, LB 988, § 7; Laws 2003, LB 607, § 10; Laws 2006, LB 956, § 7.

50-1208 Performance audit; committee; duties; section; duties.

(1) The committee shall, by majority vote, adopt requests for performance audit. The committee chairperson shall notify each requester of any action taken on his or her request.

(2) Before the section begins a performance audit, it shall notify in writing the agency director, the program director, when relevant, and the Governor that a performance audit will be conducted.

(3) Following notification, the section shall arrange an entrance conference to provide the agency with further information about the audit process. The agency director shall inform the agency staff, in writing, of the performance audit and shall instruct agency staff to cooperate fully with the section.

(4) After the entrance conference, the section shall conduct the research necessary to draft a scope statement for consideration by the committee. The scope statement shall identify the specific issues to be addressed in the audit. The committee shall, by majority vote, adopt, reject, or amend and adopt the scope statement prepared by the section.

(5) Once the committee has adopted a scope statement, the section shall develop an audit plan. The audit plan shall include a description of the research and audit methodologies to be employed and a projected deadline for completion of the section's report. The audit plan shall be submitted to the committee, and a majority vote shall be required for its approval.

(6) If the performance audit reveals a need to modify the scope statement or audit plan, the Legislative Auditor may request that the committee make revisions. A majority vote shall be required to revise the scope statement or audit plan. The agency shall be notified in writing of any revision to the scope statement or audit plan.

Source: Laws 1992, LB 988, § 8; Laws 2003, LB 607, § 11; Laws 2006, LB 956, § 8.

50-1210 Report of findings and recommendations; distribution; confidentiality; agency response.

(1) Upon completion of a performance audit, the section shall prepare a report of its findings and recommendations for action. The Legislative Auditor shall provide the section's report concurrently to the committee, agency director, and Legislative Fiscal Analyst. The committee may, by majority vote,

release the section's report or portions thereof to other individuals, with the stipulation that the released material shall be kept confidential.

(2) When the Legislative Auditor provides the report to the Legislative Fiscal Analyst, the Legislative Fiscal Analyst shall issue an opinion to the committee indicating whether the section's recommendations can be implemented by the agency within its current appropriation.

(3) When the Legislative Auditor provides the report to the agency, the agency shall have twenty business days from the date of receipt of the report to provide a written response. Any written response received from the agency shall be attached to the committee report. The agency shall not release any part of the report to any person outside the agency, except that an agency may discuss the report with the Governor. The Governor shall not release any part of the report.

(4) Following receipt of any written response from the agency, the Legislative Auditor shall prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the section's report or recommendations.

Source: Laws 1992, LB 988, § 10; Laws 2003, LB 607, § 13; Laws 2006, LB 956, § 9.

50-1211 Committee; review materials; reports; public hearing; procedure.

(1) The committee shall review the section's report, the agency's response, the Legislative Auditor's summary of the agency's response, and the Legislative Fiscal Analyst's opinion prescribed in section 50-1210. The committee may amend and shall adopt or reject each recommendation in the report and indicate whether each recommendation can be implemented by the agency within its current appropriation. The adopted recommendations shall be incorporated into a committee report, which shall be approved by majority vote.

(2) The committee report shall include, but not be limited to, the section's report, the agency's written response to the report, the Legislative Auditor's summary of the agency response, the committee's recommendations, and any opinions of the Legislative Fiscal Analyst regarding whether the committee's recommendations can be implemented by the agency within its current appropriation.

(3) The committee may decide, by majority vote, to defer adoption of a committee report pending a public hearing. If the committee elects to schedule a public hearing, it shall release, for review by interested persons prior to the hearing, the section's report, the agency's response, the Legislative Auditor's summary of the agency's response, and any opinions of the Legislative Fiscal Analyst. The public hearing shall be held not less than ten nor more than twenty business days following release of the materials.

(4) When the committee elects to schedule a hearing, a summary of the testimony received at the hearing shall be attached to the committee report as an addendum. A transcript of the testimony received at the hearing shall be on file with the committee and available for public inspection. Unless the committee votes to delay release of the committee report, the report shall be released within forty business days after the public hearing.

(5) Once the committee has approved its report, the committee shall, by majority vote, cause the committee report to be released to all members of the

Legislature and to the public. The committee may, by majority vote, release the committee report or portions thereof prior to public release of the report.

Source: Laws 1992, LB 988, § 11; Laws 2003, LB 607, § 14; Laws 2006, LB 956, § 10.

50-1213 Section; access to information and records; prohibited acts; penalty; proceedings; not reviewable by court; committee or section employee; privilege; working papers; not public records.

(1) The section shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, unless the section is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the agency shall provide the committee with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the section access to all information and records or portions thereof that can legally be reviewed. Accommodations that may be negotiated between the agency and the committee include, but are not limited to, a requirement that specified information or records be reviewed on agency premises and a requirement that specified working papers be securely stored on agency premises.

(2) Except as provided in this section, any confidential information or confidential records shared with the section shall remain confidential and shall not be shared by an employee of the section with any person who is not an employee of the section, including any member of the committee. If necessary for the conduct of the performance audit, the section may discuss or share confidential information with the chairperson of the committee. If a dispute arises between the section and the agency as to the accuracy of a performance audit or preaudit inquiry involving confidential information or confidential records, the Speaker of the Legislature, as a member of the committee, will be allowed access to the confidential information or confidential records for the purpose of assessing the accuracy of the performance audit or preaudit inquiry.

(3) Except as provided in subdivision (10)(c) of section 77-27,119, if the speaker or chairperson knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor. Except as provided in subsection (11) of section 77-2711 and subdivision (10)(c) of section 77-27,119, if any employee or former employee of the section knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor and, in the case of an employee, shall be dismissed.

(4) No proceeding of the committee or opinion or expression of any member of the committee or section employee acting at the direction of the committee shall be reviewable in any court. No member of the committee or section employee acting at the direction of the committee shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters relating to the work of the section except in a proceeding brought to enforce the Legislative Performance Audit Act.

(5) Pursuant to sections 84-712 and 84-712.01 and subdivision (5) of section 84-712.05, the working papers obtained or produced by the committee or section shall not be considered public records. The committee may make the working papers available for purposes of an external quality control review as

required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential when in the possession of the section.

Source: Laws 1992, LB 988, § 13; Laws 2003, LB 607, § 16; Laws 2006, LB 588, § 5.

50-1214 Names not included in documents, when; state employee; immunity.

By majority vote, the committee may decide not to include in any document that will be a public record the names of persons providing information to the section or committee.

No employee of the State of Nebraska who provides information to the committee or section shall be subject to any penalties, sanctions, or restrictions in connection with his or her employment as a result of the provision of such information.

Source: Laws 1992, LB 988, § 14; Laws 2003, LB 607, § 17; Laws 2006, LB 588, § 6.

50-1215 Violations; penalty.

Any person who willfully obstructs or hinders the conduct of a performance audit or preaudit inquiry or who willfully misleads or attempts to mislead any person charged with the duty of conducting a performance audit or preaudit inquiry shall be guilty of a Class II misdemeanor.

Source: Laws 1992, LB 988, § 15; Laws 2003, LB 607, § 18; Laws 2006, LB 588, § 7.

ARTICLE 13

REVIEW OF BOARDS AND COMMISSIONS

Section
50-1302. Government, Military and Veterans Affairs Committee; report.

50-1302 Government, Military and Veterans Affairs Committee; report.

(1) Every four years, beginning in 2008, the Government, Military and Veterans Affairs Committee of the Legislature shall prepare and publish a report pertaining to boards, commissions, and similar entities created by law that are made part of or are placed in the executive branch of state government. The committee may also include entities created by executive order or by an agency director. The report shall be submitted to the Legislature on December 1 of such year.

(2) The report shall include, but not be limited to, the following:

(a) The name of each board, commission, or similar entity;

(b) The name of a parent agency, if any;

(c) The statutory citation or other authorization for the creation of the board, commission, or entity;

(d) The number of members of the board, commission, or entity and how the members are appointed;

(e) The qualifications for membership on the board, commission, or entity;

(f) The number of times the board, commission, or entity is required to meet during the year and the number of times it actually met;

(g) Budget information of the board, commission, or entity for the four most recently completed fiscal years; and

(h) A brief summary of the accomplishments of the board, commission, or entity for the past four years.

Source: Laws 1999, LB 298, § 2; Laws 2002, LB 93, § 4; Laws 2005, LB 241, § 1.

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.

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.

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.

50-1404 Legislature's Planning Committee; powers.

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

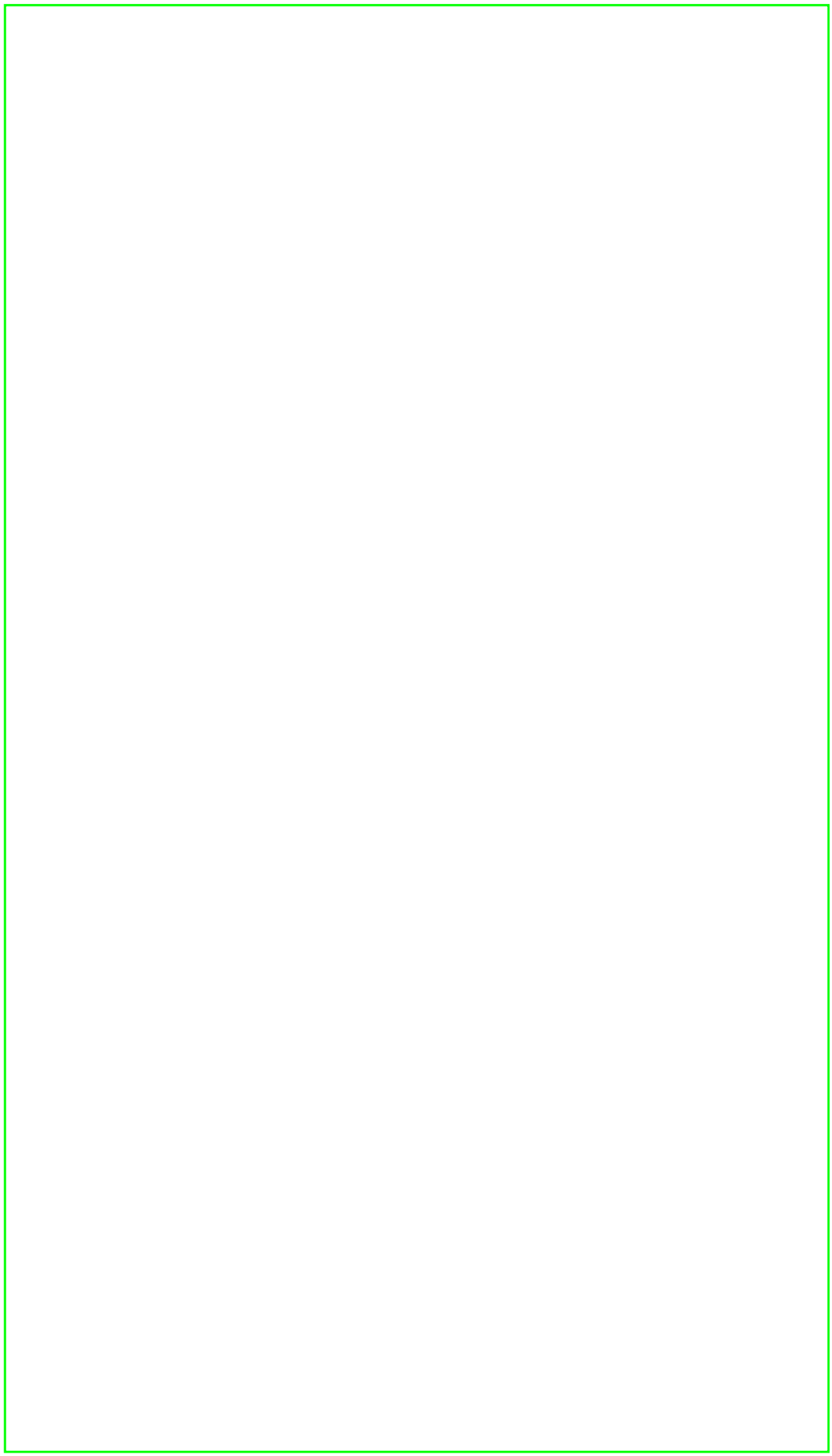
(1) Hold public hearings;

(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.



CHAPTER 51
LIBRARIES AND MUSEUMS

Article.
2. Public Libraries. 51-201.03.

ARTICLE 2
PUBLIC LIBRARIES

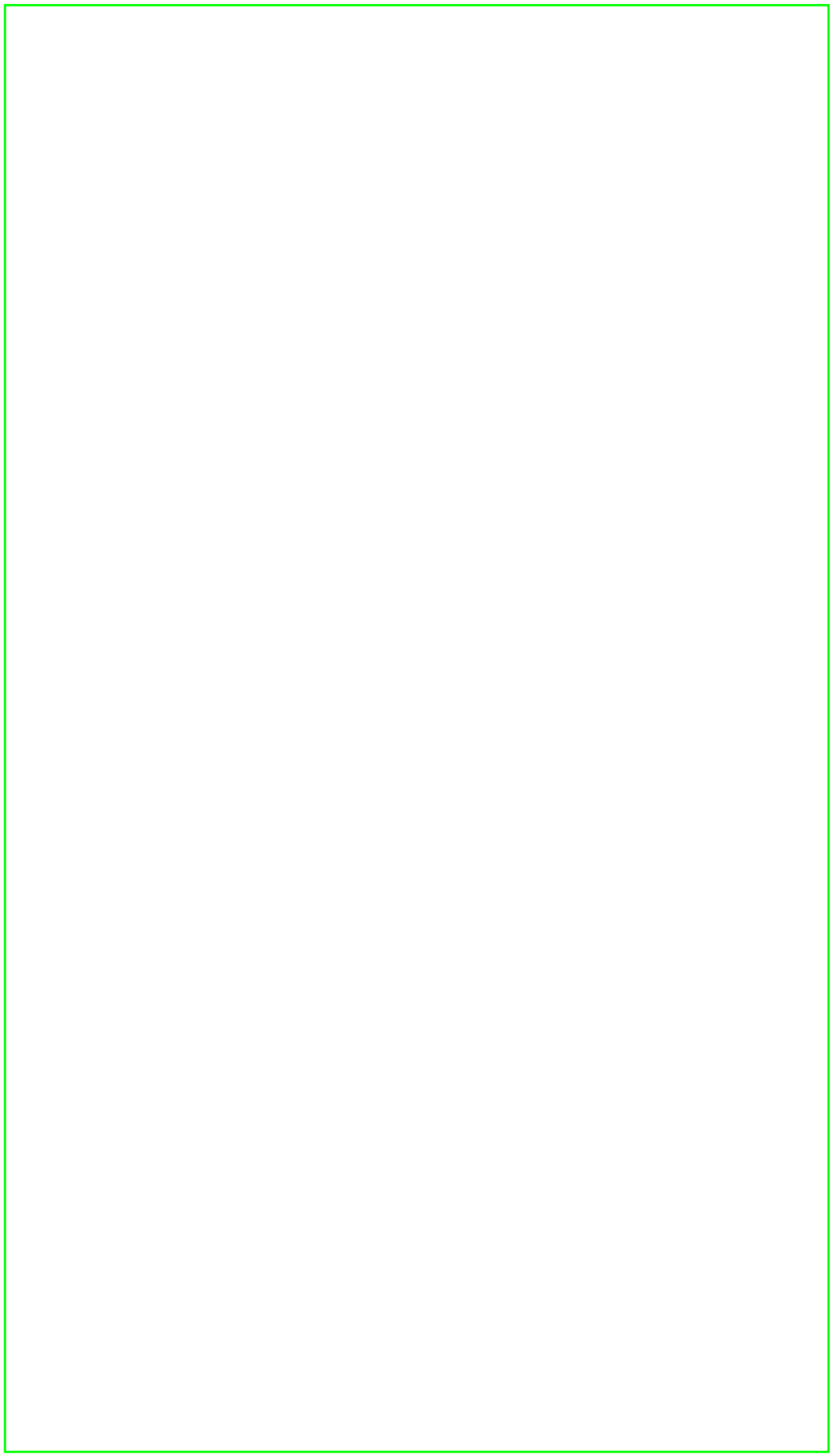
Section
51-201.03. County library; petition to establish; procedure; election.

51-201.03 County library; petition to establish; procedure; election.

(1) The registered voters of the incorporated and unincorporated areas of a county which do not have a public library may file an initiative petition with the county board requesting the establishment of a county library. The petition shall be filed by July 31 prior to a statewide general election. Signatures gathered before the last statewide general election shall not be counted. An initiative petition shall conform to the requirements of section 32-628. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The county board shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be five percent of the voters registered at the last statewide general election in the incorporated and unincorporated areas of the county which do not have a public library. The election commissioner or county clerk shall notify the county board within thirty days after receiving the petitions from the county board whether the required number of signatures has been gathered.

(2) If the county board determines that the petitions are in proper form and signed by the necessary number of registered voters, the county board shall notify the governing body and library board of each incorporated area within the county within ten days after such determination and shall publish in a newspaper of general circulation in the county that the registered voters of the unincorporated area of the county and of the incorporated areas which do not have a public library will be asked to vote on the issue at the next statewide general election and shall submit the question of whether to establish a county library to the voters as required in section 51-201.

Source: Laws 1997, LB 250, § 11; Laws 2008, LB269, § 12.



CHAPTER 52
LIENS

Article.
1. Construction Lien.
   (a) Miscellaneous. 52-118.
4. Lien of Physician, Nurse, or Hospital. 52-401.
6. Lien for Services Performed upon Personal Property. 52-604.
13. Filing System for Farm Product Security Interests. 52-1301 to 52-1318.
16. Master Lien List. 52-1602.
18. Mobile Homes. 52-1801.
20. Homeowners' Association. 52-2001.

ARTICLE 1
CONSTRUCTION LIEN

(a) MISCELLANEOUS

Section
52-118. Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception.

(a) MISCELLANEOUS

52-118 Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception.

(1) Except as provided in subsection (2) of this section, it shall be the duty of the State of Nebraska or any department or agency thereof, the county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract for the erecting, furnishing, or repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract, to which the general provisions of the mechanics' lien laws do not apply and when the mechanics and laborers have no lien to secure the payment of their wages and suppliers who furnish material and who lease equipment for such work have no lien to secure payment therefor, to take from the person as defined in section 49-801 to whom the contract is awarded a payment bond or bonds in a sum not less than the contract price with a corporate surety company and agent selected by such person, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the erecting, furnishing, or repairing of the public structure or improvement or in performing the contract.

(2) The labor and material payment bond or bonds referred to in subsection (1) of this section shall not be required for (a) any project bid or proposed by the State of Nebraska or any department or agency thereof which has a total cost of fifteen thousand dollars or less or (b) any project bid or proposed by any county board, contracting board of any city, village, or school district, public board, or officer referred to in subsection (1) of this section which has a total

cost of ten thousand dollars or less unless the state, department, agency, board, or officer includes a bond requirement in the specifications for the project.

(3) The bond or bonds referred to in subsection (1) of this section shall be to, filed with, approved by, and safely kept by the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract. No contract referred to in subsection (1) of this section shall be entered into by the State of Nebraska, department or agency thereof, officer or officers, or board referred to in subsection (1) of this section until the bond or bonds referred to in subsection (1) of this section has been so made, filed, and approved.

(4) The bond or bonds referred to in subsection (1) of this section may be taken from the person to whom the contract is awarded by the owner and owner's representative jointly as determined by the owner. The corporate surety company referred to in subsection (1) of this section shall have a rating acceptable to the owner as the owner may require.

Source: Laws 1889, c. 28, § 1, p. 375; Laws 1913, c. 170, § 1, p. 522; R.S.1913, § 3840; C.S.1922, § 3224; C.S.1929, § 52-118; R.S. 1943, § 52-118; Laws 1953, c. 179, § 4, p. 567; Laws 1955, c. 199, § 1, p. 565; Laws 1961, c. 257, § 4, p. 754; Laws 1990, LB 257, § 1; Laws 2001, LB 420, § 32; Laws 2007, LB208, § 1.

ARTICLE 4

LIEN OF PHYSICIAN, NURSE, OR HOSPITAL

Section
52-401. Lien; scope and operation; exception; reduction, when; claim of lien; notice; priority of claims; access to records.

52-401 Lien; scope and operation; exception; reduction, when; claim of lien; notice; priority of claims; access to records.

Whenever any person employs a physician, nurse, chiropractor, or hospital to perform professional service or services of any nature, in the treatment of or in connection with an injury, and such injured person claims damages from the party causing the injury, such physician, nurse, chiropractor, or hospital, as the case may be, shall have a lien upon any sum awarded the injured person in judgment or obtained by settlement or compromise on the amount due for the usual and customary charges of such physician, nurse, chiropractor, or hospital applicable at the times services are performed, except that no such lien shall be valid against anyone coming under the Nebraska Workers' Compensation Act. For persons covered under private medical insurance or another private health benefit plan, the amount of the lien shall be reduced by the contracted discount or other limitation which would have been applied had the claim been submitted for reimbursement to the medical insurer or administrator of such other health benefit plan. The measure of damages for medical expenses in personal injury claims shall be the private party rate, not the discounted amount.

In order to prosecute such lien, it shall be necessary for such physician, nurse, chiropractor, or hospital to serve a written notice upon the person or corporation from whom damages are claimed that such physician, nurse, chiropractor, or hospital claims a lien for such services and stating the amount due and the nature of such services, except that whenever an action is pending in court for the recovery of such damages, it shall be sufficient to file the notice of such lien in the pending action.

A physician, nurse, chiropractor, or hospital claiming a lien under this section shall not be liable for attorney's fees and costs incurred by the injured person in securing the judgment, settlement, or compromise, but the lien of the injured person's attorney shall have precedence over the lien created by this section.

Upon a written request and with the injured person's consent, a lienholder shall provide medical records, answers to interrogatories, depositions, or any expert medical testimony related to the recovery of damages within its custody and control at a reasonable charge to the injured person.

Source: Laws 1927, c. 162, § 1, p. 425; C.S.1929, § 52-401; R.S.1943, § 52-401; Laws 1986, LB 811, § 138; Laws 1995, LB 172, § 1; Laws 2008, LB586, § 1.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

ARTICLE 6

LIEN FOR SERVICES PERFORMED UPON PERSONAL PROPERTY

Section
52-604. Sale; proceeds; distribution.

52-604 Sale; proceeds; distribution.

From the proceeds of such sale the claimant shall satisfy his or her lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be delivered to the county treasurer of the county in which the sale was made. The treasurer of the county in which the property was sold shall issue his or her receipt therefor. The county treasurer shall make proper entry in the books of his or her office of all money so paid over to him or her, and shall hold the money for a period of five years, and immediately thereafter shall pay the same into the school fund of the proper county, to be appropriated for the support of the schools, unless the owner of the property sold, his or her legal representatives, or any lien or security interest holder of record, shall within such period of five years after such money shall have been deposited with the treasurer, furnish satisfactory evidence of the ownership of such property or satisfactory evidence of the lien or security interest, in which event he, she, or they shall be entitled to receive from such treasurer the amount so deposited with him or her.

Source: Laws 1923, c. 118, § 4, p. 281; C.S.1929, § 52-604; R.S.1943, § 52-604; Laws 1974, LB 960, § 3; Laws 2005, LB 82, § 1.

ARTICLE 13

FILING SYSTEM FOR FARM PRODUCT SECURITY INTERESTS

Section
52-1301. Legislative intent.
52-1302. Definitions, where found.
52-1302.01. Approved unique identifier, defined.
52-1307. Effective financing statement, defined.
52-1308. Farm product, defined.
52-1312. Central filing system; Secretary of State; duties; system requirements; fees.
52-1313. Filing of effective financing statement; fees.

52-1301 Legislative intent.

It is the intent of the Legislature to adopt a central filing system for security interests relating to farm products pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198. It is also the intent of the Legislature that upon the adoption of the central filing system that security interest holders be encouraged to use such system in lieu of any other notice provided by section 1324 for farm products produced or located in the State of Nebraska which are included in the central filing system.

Source: Laws 1986, Third Spec. Sess., LB 1, § 1; Laws 2007, LB124, § 58.

52-1302 Definitions, where found.

For purposes of sections 52-1301 to 52-1322, unless the context otherwise requires, the definitions found in sections 52-1302.01 to 52-1311 shall be used.

Source: Laws 1986, Third Spec. Sess., LB 1, § 2; Laws 1998, LB 924, § 19; Laws 2003, LB 4, § 1; Laws 2007, LB124, § 59.

52-1302.01 Approved unique identifier, defined.

Approved unique identifier means a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of the United States Department of Agriculture.

Source: Laws 2007, LB124, § 60.

52-1307 Effective financing statement, defined.

Effective financing statement means a statement that:

(1) Is an original or reproduced copy thereof;

(2) Is filed by the secured party in the office of the Secretary of State;

(3) Is signed, authorized, or otherwise authenticated by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;

(4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the social security number or other approved unique identifier of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is produced or located, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject

to the particular security interest, and (h) such other information that the Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out his or her duties under sections 52-1301 to 52-1322;

(5) Shall be amended in writing, within three months, and signed, authorized, or otherwise authenticated by the debtor and filed, to reflect material changes. If the statement is filed electronically, the signature of the debtor shall not be required;

(6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refiling or filing a continuation statement within six months before the expiration of the five-year period;

(7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;

(8) Is accompanied by the requisite filing fee set by section 52-1313; and

(9) Substantially complies with the requirements of this section even though the statement contains minor errors that are not seriously misleading.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

Source: Laws 1986, Third Spec. Sess., LB 1, § 7; Laws 1998, LB 924, § 20; Laws 1998, LB 1321, § 90; Laws 1999, LB 552, § 1; Laws 2002, LB 1105, § 439; Laws 2003, LB 4, § 2; Laws 2007, LB124, § 61.

52-1308 Farm product, defined.

Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish, flax seed, grapes, hay, hogs, honey, honeydew melon, horses, legumes, milk, millet, muskmelon, oats, onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

Source: Laws 1986, Third Spec. Sess., LB 1, § 8; Laws 2007, LB124, § 62.

52-1312 Central filing system; Secretary of State; duties; system requirements; fees.

The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. The system shall provide a means for filing effective financing

statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed in the office of the Secretary of State. A debtor's residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The filing officer shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements and notices according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement;

(2) That the Secretary of State compile information from all effective financing statements or notices filed with the Secretary of State into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according to the social security number or other approved unique identifier of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 52-1307;

(3) That the Secretary of State cause the information on the master list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's social security number or other approved unique identifier for individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is produced or located or to any crop year or years or a combination of such identifiers;

(4) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive lists described in subdivision (3) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or lists described in subdivision (3) of this section which such registrant desires to receive. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars.

A registrant shall pay an additional annual fee to receive quarterly lists described in subdivision (3) of this section. For each farm product list provided on microfiche, the annual fee shall be twenty-five dollars. For each farm product list provided on paper, the annual fee shall be two hundred dollars. The annual fee for a special list which is a list limited to fewer than all counties or less than all crop years shall be one hundred fifty dollars for each farm product.

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received by the registrants for a period of five years;

(5) That the lists as identified pursuant to subdivision (4) of this section be distributed by the Secretary of State on a quarterly basis and be in written or printed form. A registrant may choose in lieu of receiving a written or printed form to receive statewide lists on microfiche. The Secretary of State may provide for the distribution of the lists on any other medium and establish reasonable charges therefor. The distribution shall be made by either certified or registered mail, return receipt requested.

The Secretary of State shall, by rule and regulation, establish the dates upon which the quarterly distributions will be made, the dates after which a filing of an effective financing statement will not be reflected on the next quarterly distribution of lists, and the dates by which a registrant must complete a registration to receive the next quarterly list; and

(6) That the Secretary of State remove lapsed and terminated effective financing statements or notices of such financing statements from the master list prior to preparation of the lists required to be distributed by subdivision (5) of this section.

Effective financing statements or any amendments or continuations of effective financing statements originally filed in the office of the county clerk that have been indexed and entered on the Secretary of State's central filing system need not be retained by the county filing office and may be disposed of or destroyed.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for (a) certification of the central filing system and (b) approval of the system or method of selecting an approved unique identifier.

The Secretary of State shall deposit any funds received pursuant to subdivision (4) of this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1986, Third Spec. Sess., LB 1, § 12; Laws 1988, LB 943, § 13; Laws 1998, LB 924, § 21; Laws 1998, LB 1321, § 91; Laws 2005, LB 451, § 1; Laws 2007, LB124, § 63.

52-1313 Filing of effective financing statement; fees.

(1) Presentation for filing of an effective financing statement and the acceptance of the statement by the Secretary of State constitutes filing under sections 52-1301 to 52-1322.

(2) The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing of an effective financing statement, an amendment, or a continuation statement shall be ten dollars. There shall be no fee for the filing of a termination statement.

(3) The fee for attachments to all instruments submitted for filing shall be fifty cents per page.

(4) The Secretary of State shall deposit any fees received pursuant to this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1986, Third Spec. Sess., LB 1, § 13; Laws 1998, LB 924, § 22; Laws 1998, LB 1321, § 92; Laws 2003, LB 4, § 3; Laws 2004, LB 1099, § 1; Laws 2007, LB124, § 64.

52-1314 Filing of continuation statement; requirements; insolvency proceedings; effect.

(1) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subdivision (6) of section 52-1307. Any such continuation statement shall be signed, authorized, or otherwise authenticated by the secured party, identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years after the last date to which the filing was effective whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the effective financing statement shall remain effective until termination of the insolvency proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(2) Any continuation statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-611 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Source: Laws 1986, Third Spec. Sess., LB 1, § 14; Laws 1999, LB 552, § 2; Laws 2002, LB 1105, § 440; Laws 2007, LB124, § 65.

52-1315 Notice of lapse of effective financing statement; waiver of notice; effect.

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall notify the debtor in writing of his or her right to have a notice of lapse of his or her effective financing statement filed which shall lead to the removal of his or her name from the files and lists compiled by the Secretary of State. In lieu of such notice, the secured party may acquire a waiver of the debtor of such right and a request by the debtor that his or her effective financing statement be retained on file. Such notice may be given or waiver acquired by the secured party at any time prior to the time specified in this subsection for giving the notice.

(2) If the secured party does not furnish the notice or obtain the waiver specified in subsection (1) of this section, the secured party shall, within ten days of final payment of all secured obligations, provide the debtor with a written notification of the debtor's right to have a notice of lapse filed. The secured party shall on written demand by the debtor send the debtor a notice of lapse to the effect that he or she no longer claims a security interest under the effective financing statement, which shall be identified by file number. The notice of lapse need only be signed, authorized, or otherwise authenticated by the secured party.

(3) If the affected secured party fails to send a notice of lapse within ten days after proper demand, pursuant to subsection (2) of this section, he or she shall be liable to the debtor for any loss caused to the debtor by such failure.

(4) On presentation to the Secretary of State of a notice of lapse, he or she shall treat it as a termination statement and note it in the index. If he or she has received the notice of lapse in duplicate, he or she shall return one copy of the notice of lapse to the filing party stamped to show the time of receipt thereof.

(5) There shall be no fee for filing a notice of lapse or termination statement.

Source: Laws 1986, Third Spec. Sess., LB 1, § 15; Laws 1988, LB 943, § 14; Laws 1998, LB 1321, § 93; Laws 2007, LB124, § 66.

52-1317 Verification of security interest; seller; duty.

In order to verify the existence or nonexistence of a security interest, a buyer, commission merchant, or selling agent may request a seller to disclose such seller's social security number or approved unique identifier or, in the case of a seller doing business other than as an individual, the Internal Revenue Service taxpayer identification number or approved unique identifier of such seller.

Source: Laws 1986, Third Spec. Sess., LB 1, § 17; Laws 2007, LB124, § 67.

52-1318 Rules and regulations; federal provisions adopted; Secretary of State; duties.

(1) The State of Nebraska hereby adopts the federal rules and regulations in effect on September 1, 2007, adopted and promulgated to implement section 1324 of the Food Security Act of 1985, Public Law 99-198. If there is a conflict between such rules and regulations and sections 52-1301 to 52-1322, the federal rules and regulations shall apply.

(2) The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1301 to 52-1322 pursuant to the Administrative Procedure Act. If necessary to obtain federal certification of the central filing system, additional or alternative requirements made in conformity with section 1324 of the Food Security Act of 1985, Public Law 99-198, may be imposed by the Secretary of State by rule and regulation.

(3) The Secretary of State shall prescribe all forms to be used for filing effective financing statements and subsequent actions.

Source: Laws 1986, Third Spec. Sess., LB 1, § 18; Laws 1998, LB 924, § 24; Laws 2003, LB 4, § 4; Laws 2007, LB124, § 68.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 16
MASTER LIEN LIST

Section
52-1602. Master lien list; distribution; registration to receive list; fee.

52-1602 Master lien list; distribution; registration to receive list; fee.

(1) The master lien list prescribed in section 52-1601 shall be distributed by the Secretary of State on a quarterly basis corresponding to the date on which the lists provided pursuant to sections 52-1301 to 52-1322 are distributed. Such master lien list may be mailed with the list provided pursuant to sections

52-1301 to 52-1322. If mailed separately, the master lien list shall be mailed by either certified or registered mail, return receipt requested.

(2) Any person may register with the Secretary of State to receive the master lien list prescribed in section 52-1601. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars, except that a registrant under sections 52-1301 to 52-1322 shall not be required to pay the registration fee provided by this section in addition to the registration fee paid pursuant to sections 52-1301 to 52-1322 for the same annual registration period. Beginning for calendar year 1989, a registrant under sections 52-1601 to 52-1605 shall pay an additional annual fee to receive quarterly master lien lists prescribed in section 52-1601. For each master lien list provided on microfiche, the annual fee shall be twenty-five dollars. For each master lien list provided on paper, the annual fee shall be two hundred dollars. The Secretary of State may provide for the distribution of master lien lists on any other medium and may establish reasonable charges therefor.

(3) The Secretary of State, by rule and regulation, shall establish the dates after which a filing of liens will not be reflected on the next quarterly distribution of the master lien list and the date by which a registrant shall complete a registration in order to receive the next quarterly master lien list.

(4) The Secretary of State shall deposit any funds received pursuant to subsection (2) of this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1988, LB 987, § 2; Laws 1998, LB 924, § 25; Laws 2003, LB 4, § 5; Laws 2007, LB124, § 69.

ARTICLE 18

MOBILE HOMES

Section

52-1801. Mobile home security interest; perfection; mobile home certificate of title; notation of lien; laws applicable.

52-1801 Mobile home security interest; perfection; mobile home certificate of title; notation of lien; laws applicable.

(1) Any security interest in a mobile home perfected on or after July 15, 1992, and prior to April 8, 1993, shall continue to be perfected:

(a) Until the financing statement perfecting such security interest is terminated or would have lapsed in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code; or

(b) Until a lien is noted on the face of the certificate of title for the mobile home pursuant to section 60-164.

(2) Any lien noted on the face of a mobile home certificate of title on or after April 8, 1993, pursuant to subdivision (1)(b) of this section on behalf of the holder of a security interest in the mobile home which was perfected on or after July 15, 1992, and prior to April 8, 1993, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a mobile home certificate of title shall, upon request, surrender the mobile home certificate of title to a holder of a security interest in

the mobile home which was perfected on or after July 15, 1992, and prior to April 8, 1993, to permit notation of a lien on the mobile home certificate of title and shall do such other acts as may be required to permit such notation.

(4) If the owner of a mobile home subject to a security interest perfected on or after July 15, 1992, and prior to April 8, 1993, fails or refuses to obtain a certificate of title after April 8, 1993, the security interest holder may obtain a certificate of title in the name of the owner of the mobile home following the procedures of subsection (2) of section 60-147 and may have a lien noted on the certificate of title pursuant to section 60-164.

(5) The assignment, release, or satisfaction of a security interest in a mobile home shall be governed under the laws under which it was perfected.

(6) This section shall not affect the validity or priority of a lien established against a mobile home by the notation of such lien on the mobile home certificate of title prior to July 15, 1992.

Source: Laws 1993, LB 340, § 3; Laws 1999, LB 550, § 35; Laws 2005, LB 276, § 101.

ARTICLE 20

HOMEOWNERS' ASSOCIATION

Section
52-2001. Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement.

52-2001 Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement.

(1) A homeowners' association has a lien on a member's real estate for any assessment levied against real estate or fines imposed against its owner from the time the assessment or fine becomes due and a notice containing the dollar amount of such lien is recorded in the office where mortgages or deeds of trust are recorded. The homeowners' association's lien may be foreclosed in like manner as a mortgage on real estate but the homeowners' association shall give reasonable notice of its action to all lienholders of real estate whose interest would be affected. Unless the homeowners' association declaration or agreement otherwise provides, fees, charges, late charges, fines, and interest charged are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment may be a lien from the time the first installment thereof becomes due.

(2) A lien under this section is prior to all other liens and encumbrances on real estate except (a) liens and encumbrances recorded before the recordation of the declaration or agreement, (b) a first mortgage or deed of trust on real estate recorded before the date on which the assessment sought to be enforced became delinquent, and (c) liens for real estate taxes and other governmental assessments or charges against real estate. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

(3) Unless the declaration or agreement otherwise provides, if two or more homeowners' associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(4) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(5) This section does not prohibit actions to recover sums for which subsection (1) of this section creates a lien or prohibit a homeowners' association from taking a deed in lieu of foreclosure.

(6) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(7) The homeowners' association, upon written request, shall furnish to a homeowners' association member a recordable statement setting forth the amount of unpaid assessments against his or her real estate. The statement must be furnished within ten business days after receipt of the request and is binding on the homeowners' association, the governing board, and every homeowners' association member.

(8) For purposes of this section:

(a) Declaration means any instruments, however denominated, that create the homeowners' association and any amendments to those instruments;

(b)(i) Homeowners' association means an association whose members consist of a private group of fee simple owners of residential real estate formed for the purpose of imposing and receiving payments, fees, or other charges for:

(A) The use, rental, operation, or maintenance of common elements available to all members and services provided to the member for the benefit of the member or his or her real estate;

(B) Late payments of assessments and, after notice and opportunity to be heard, the levying of fines for violations of homeowners' association declarations, agreements, bylaws, or rules and regulations; or

(C) The preparation and recordation of amendments to declarations, agreements, resale statements, or statements for unpaid assessments; and

(ii) Homeowners' association does not include a unit owners association organized under the Nebraska Condominium Act; and

(c) Real estate means the real estate of a homeowners' association member as such real estate is specifically described in the member's homeowners' association declaration or agreement.

Source: Laws 2010, LB736, § 1.
Effective date March 4, 2010.

Cross References

Nebraska Condominium Act, see section 76-825.

CHAPTER 53
LIQUORS

Article.
1. Nebraska Liquor Control Act.
   (a) General Provisions. 53-101 to 53-103.42.
   (c) Nebraska Liquor Control Commission; General Powers. 53-116.02 to 53-117.07.
   (d) Licenses; Issuance and Revocation. 53-122 to 53-149.
   (f) Tax. 53-163, 53-164.01.
   (g) Manufacturer's and Wholesaler's Record and Report. 53-165.
   (h) Keg Sales. 53-167.03, 53-167.04.
   (i) Prohibited Acts. 53-169 to 53-188.
   (j) Penalties. 53-1,104.
   (k) Prosecution and Enforcement. 53-1,115, 53-1,120.01.
2. Beer Distribution. 53-208.
3. Nebraska Grape and Winery Board. 53-304.
4. Minor Alcoholic Liquor Liability Act. 53-401 to 53-409.

ARTICLE 1
NEBRASKA LIQUOR CONTROL ACT

(a) GENERAL PROVISIONS

Section
53-101. Act, how cited.
53-103. Definitions, where found.
53-103.01. Alcohol, defined.
53-103.02. Alcoholic liquor, defined.
53-103.03. Beer, defined.
53-103.04. Brand, defined.
53-103.05. Brewpub, defined.
53-103.06. Campus, defined.
53-103.07. Cancel, defined.
53-103.08. Cigar bar, defined.
53-103.09. Club, defined.
53-103.10. Commission, defined.
53-103.11. Consume, defined.
53-103.12. Craft brewery, defined.
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53-103.23. Minor, defined.
53-103.24. Near beer, defined.
53-103.25. Nonbeverage user, defined.
53-103.26. Nonprofit corporation, defined.
53-103.27. Original package, defined.
53-103.28. Person, defined.
53-103.29. Private label, defined.

(a) GENERAL PROVISIONS

53-101 Act, how cited.

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

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

§ 1; Laws 2009, LB232, § 1; Laws 2009, LB355, § 1; Laws 2010, LB258, § 1; Laws 2010, LB861, § 7.
Effective date July 15, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB258, section 1, with LB861, section 7, to reflect all amendments.

53-103 Definitions, where found.

For purposes of the Nebraska Liquor Control Act, the definitions found in sections 53-103.01 to 53-103.42 apply.

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; Laws 2010, LB788, § 1; Laws 2010, LB861, § 8.
Effective date July 15, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB788, section 1, with LB861, section 8, to reflect all amendments.

53-103.01 Alcohol, defined.

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.

Source: Laws 2010, LB861, § 9.
Effective date July 15, 2010.

53-103.02 Alcoholic liquor, defined.

(1) 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 that contains more than one-half of one percent alcohol.

(2) The Nebraska Liquor Control 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.

Source: Laws 2010, LB861, § 10.
Effective date July 15, 2010.

53-103.03 Beer, defined.

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.

Source: Laws 2010, LB861, § 11.
Effective date July 15, 2010.

53-103.04 Brand, defined.

Brand means alcoholic liquor identified as the product of a specific manufacturer.

Source: Laws 2010, LB861, § 12.
Effective date July 15, 2010.

53-103.05 Brewpub, defined.

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

Source: Laws 2010, LB861, § 13.
Effective date July 15, 2010.

53-103.06 Campus, defined.

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).

Source: Laws 2010, LB861, § 14.
Effective date July 15, 2010.

53-103.07 Cancel, defined.

Cancel means to discontinue all rights and privileges of a license.

Source: Laws 2010, LB861, § 15.
Effective date July 15, 2010.

53-103.08 Cigar bar, defined.

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

(1) Does not sell food;

(2) 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;

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

(4) Does not permit the smoking of cigarettes.

Source: Laws 2010, LB861, § 16.
Effective date July 15, 2010.

53-103.09 Club, defined.

(1) 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.

(2) 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.

Source: Laws 2010, LB861, § 17.
Effective date July 15, 2010.

53-103.10 Commission, defined.

Commission means the Nebraska Liquor Control Commission.

Source: Laws 2010, LB861, § 18.
Effective date July 15, 2010.

53-103.11 Consume, defined.

Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor.

Source: Laws 2010, LB861, § 19.
Effective date July 15, 2010.

53-103.12 Craft brewery, defined.

Craft brewery means a brewpub or a microbrewery.

Source: Laws 2010, LB861, § 20.
Effective date July 15, 2010.

53-103.13 Farm winery, defined.

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.

Source: Laws 2010, LB861, § 21.
Effective date July 15, 2010.

53-103.14 Franchise or agreement, defined.

Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes one or more of the following:

(1) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing;

(2) A relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer;

(3) A relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system;

(4) 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

(5) A relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer.

Source: Laws 2010, LB861, § 22.
Effective date July 15, 2010.

53-103.15 Generic label, defined.

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.

Source: Laws 2010, LB861, § 23.
Effective date July 15, 2010.

53-103.16 Hotel, defined.

Hotel means any building or other structure (1) 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, (2) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (3) 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.

Source: Laws 2010, LB861, § 24.
Effective date July 15, 2010.

53-103.17 Local governing body, defined.

Local governing body means (1) the city council or village board of trustees of a city or village within which the licensed premises are located or (2) 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.

Source: Laws 2010, LB861, § 25.
Effective date July 15, 2010.

53-103.18 Manager, defined.

Manager means a person appointed by a corporation or limited liability company to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the Nebraska Liquor Control Act as though he or she were the applicant, including residency and citizenship.

Source: Laws 2010, LB861, § 26.
Effective date July 15, 2010.

53-103.19 Manufacture, defined.

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 Nebraska Liquor Control Act to serve drinks for consumption on the premises where sold.

Source: Laws 2010, LB861, § 27.
Effective date July 15, 2010.

53-103.20 Manufacturer, defined.

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.

Source: Laws 2010, LB861, § 28.
Effective date July 15, 2010.

53-103.21 Microbrewery, defined.

Microbrewery means any small brewery producing a maximum of ten thousand barrels of beer per year.

Source: Laws 2010, LB861, § 29.
Effective date July 15, 2010.

53-103.22 Microdistillery, defined.

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.

Source: Laws 2010, LB861, § 30.
Effective date July 15, 2010.

53-103.23 Minor, defined.

Minor means any person, male or female, under twenty-one years of age, regardless of marital status.

Source: Laws 2010, LB861, § 31.
Effective date July 15, 2010.

53-103.24 Near beer, defined.

Near beer means beer containing less than one-half of one percent of alcohol by volume.

Source: Laws 2010, LB861, § 32.
Effective date July 15, 2010.

53-103.25 Nonbeverage user, defined.

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.

Source: Laws 2010, LB861, § 33.
Effective date July 15, 2010.

53-103.26 Nonprofit corporation, defined.

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.

Source: Laws 2010, LB861, § 34.
Effective date July 15, 2010.

53-103.27 Original package, defined.

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.

Source: Laws 2010, LB861, § 35.
Effective date July 15, 2010.

53-103.28 Person, defined.

Person means any natural person, trustee, corporation, partnership, or limited liability company.

Source: Laws 2010, LB861, § 36.
Effective date July 15, 2010.

53-103.29 Private label, defined.

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.

Source: Laws 2010, LB861, § 37.
Effective date July 15, 2010.

53-103.30 Restaurant, defined.

Restaurant means any public place (1) 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, (2) which has no sleeping accommodations, and (3) 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.

Source: Laws 2010, LB861, § 38.
Effective date July 15, 2010.

53-103.31 Retailer, defined.

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.

Source: Laws 2010, LB861, § 39.
Effective date July 15, 2010.

53-103.32 Revoke, defined.

Revoke means to permanently void and recall all rights and privileges of a license.

Source: Laws 2010, LB861, § 40.
Effective date July 15, 2010.

53-103.33 Sale, defined.

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.

Source: Laws 2010, LB861, § 41.
Effective date July 15, 2010.

53-103.34 Sampling, defined.

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.

Source: Laws 2010, LB861, § 42.
Effective date July 15, 2010.

53-103.35 Sell, defined.

Sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell.

Source: Laws 2010, LB861, § 43.
Effective date July 15, 2010.

53-103.36 Sell at retail and sale at retail, defined.

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.

Source: Laws 2010, LB861, § 44.
Effective date July 15, 2010.

53-103.37 Shipping license, defined.

Shipping license means a license granted pursuant to section 53-123.15.

Source: Laws 2010, LB861, § 45.
Effective date July 15, 2010.

53-103.38 Spirits, defined.

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.

Source: Laws 2010, LB861, § 46.
Effective date July 15, 2010.

53-103.39 Suspend, defined.

Suspend means to cause a temporary interruption of all rights and privileges of a license.

Source: Laws 2010, LB861, § 47.
Effective date July 15, 2010.

53-103.40 Territory or sales territory, defined.

Territory or sales territory means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer.

Source: Laws 2010, LB861, § 48.
Effective date July 15, 2010.

53-103.41 Wholesaler, defined.

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 Nebraska Liquor Control 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.

Source: Laws 2010, LB861, § 49.
Effective date July 15, 2010.

53-103.42 Wine, defined.

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.

Source: Laws 2010, LB861, § 50.
Effective date July 15, 2010.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

53-116.02 Licensee; violations; forfeiture or revocation of license.

Whenever any retail licensee, craft brewery licensee, or microdistillery licensee has been convicted by any court of a violation of the Nebraska Liquor Control Act, the licensee may, in addition to the penalties for such offense, incur a forfeiture of the license and all money that had been paid for the license. The local governing body may conditionally revoke the license subject to a final order of the commission, or the commission may revoke the license in an original proceeding brought before it for that purpose.

Source: Laws 1935, c. 116, § 47, p. 403; C.S.Supp.,1941, § 53-347; R.S.1943, § 53-128; Laws 1989, LB 781, § 7; R.S.Supp.,1990, § 53-128; Laws 1991, LB 344, § 10; Laws 1993, LB 183, § 4; Laws 1999, LB 267, § 4; Laws 2004, LB 485, § 5; Laws 2007, LB549, § 3.

53-117.03 Employee and management training; commission; powers and duties; fees; certification.

(1) On or before January 1, 2007, the commission shall adopt and promulgate rules and regulations governing programs which provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. Such rules and regulations may include, but need not be limited to:

(a) Minimum standards governing training of beverage servers, including standards and requirements governing curriculum, program trainers, and certification requirements;

(b) Minimum standards governing training in management of licensed premises, including standards and requirements governing curriculum, program trainers, and certification requirements;

(c) Minimum standards governing the methods allowed for training programs which may include the Internet, interactive video, live training in various locations across the state, and other means deemed appropriate by the commission;

(d) Methods for approving beverage-server training organizations and programs. All beverage-server training programs approved by the commission shall issue a certificate of completion to all persons who successfully complete the program and shall provide the names of all persons completing the program to the commission;

(e) Enrollment fees in an amount determined by the commission to be necessary to cover the expense of enrolling in a training program offered by the commission pursuant to subsection (2) of this section, but not to exceed thirty dollars; and

(f) Procedures and fees for certification, which fees shall be in an amount determined by the commission to be sufficient to defray the expenses associated with maintaining a list of persons certified under this section and issuing proof of certification to eligible individuals but shall not exceed twenty dollars.

(2) The commission may create a program to provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. The program shall include training on the issues of sales and service of alcoholic liquor to minors and to visibly inebriated purchasers. The commission may charge each person enrolling in the program an enrollment fee as provided in the rules and regulations, but such fee shall not exceed thirty dollars. All such fees shall be collected by the commission and remitted to the State Treasurer for credit to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

(3) A person who has completed a training program which complies with the rules and regulations, whether such program is offered by the commission or by another organization, may become certified by the commission upon the commission receiving evidence that he or she has completed such program and the person seeking certification paying the certification fee established under this section.

Source: Laws 2006, LB 845, § 3.

53-117.06 Nebraska Liquor Control Commission Rule and Regulation Cash Fund; created; use; investment.

Any money collected by the commission pursuant to section 53-117.05 or 53-167.02 shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund, which fund is hereby created. The purpose of the fund shall be to cover any costs incurred by the commission in producing or distributing the material referred to in such sections and to defray the costs associated with electronic regulatory transactions, industry education events, enforcement training, and equipment for regulatory work. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Liquor Control Commission Rule and Regulation 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 70, § 4; Laws 1989, LB 781, § 18; Laws 1993, LB 183, § 7; Laws 1993, LB 332, § 6; Laws 1994, LB 1066, § 42; Laws 2008, LB993, § 1; Laws 2009, First Spec. Sess., LB3, § 28. Effective date November 21, 2009.

Cross References

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

53-117.07 Proceedings to suspend, cancel, or revoke licenses before commission.

All proceedings for the suspension, cancellation, or revocation of licenses of manufacturers, wholesalers, nonbeverage users, craft breweries, microdistilleries, railroads, airlines, shippers, and boats shall be before the commission, and the proceedings shall be in accordance with rules and regulations adopted and promulgated by it not inconsistent with law. No such license shall be so

suspended, canceled, or revoked except after a hearing by the commission with reasonable notice to the licensee and opportunity to appear and defend.

Source: Laws 1935, c. 116, § 94, p. 425; C.S.Supp.,1941, § 53-394; R.S.1943, § 53-140; Laws 1967, c. 332, § 11, p. 891; Laws 1980, LB 848, § 8; Laws 1988, LB 1089, § 19; R.S.1943, (1988), § 53-140; Laws 1991, LB 344, § 12; Laws 1996, LB 750, § 2; Laws 2007, LB549, § 4.

(d) LICENSES; ISSUANCE AND REVOCATION

53-122 Sale of liquor by drink; election; submission; procedure; when not required; prohibited acts; penalties.

(1) The commission may issue licenses for the sale of alcoholic liquor, except beer, by the drink subject to all the terms and conditions of the Nebraska Liquor Control Act in all cities and villages in this state, except in those cases when it affirmatively appears that the issuance will render null and void prior conveyances of land to such city or village for public uses and purposes by purchase, gift, or devise, under the conditions and in the manner provided in this section.

(2) If (a) a sufficient petition is signed by the registered voters of any such city or village of such number as equals twenty percent of the votes cast at the last general election held in such city or village, which petition requests that the question of licensing the sale of alcoholic liquor, except beer, by the drink in the city or village be submitted to the registered voters of the city or village at a special election to be called for that purpose and (b) such petition is presented to the clerk of the city or village, the clerk shall cause to be published one time in a legal newspaper published in or of general circulation in the city or village a notice of a special election to be held not less than ten days nor more than twenty days after the date of such publication. The notice shall state the proposition to be submitted at such special election.

(3) The question of licensing the sale of alcoholic liquor either by the drink or in the original package, or both by the drink and in the original package, may also be submitted at any general municipal election, except as otherwise provided in section 53-121, in any city or village in this state subject to the following:

(a) Upon the filing with the clerk of the city or village of a petition signed by registered voters of the city or village in a number equal to twenty percent of the votes cast at the last general election held in the city or village, such proposition or propositions shall be submitted;

(b) Each petition shall conform to the requirements of section 32-628;

(c) At the top of each sheet shall be stated the proposition or propositions to be submitted and the date of the general municipal election at which it is proposed to be submitted;

(d) No signature on the petition shall be valid unless appended to the petition within the last ninety days prior to the date of filing the petition with the clerk of the city or village; and

(e) The petition shall be filed thirty days prior to the day of the general municipal election at which the proposition is to be submitted, and during such

thirty-day period no signature shall be withdrawn and no signature shall be added.

(4) Any person who signs any proposal or petition contemplated under this section knowing that he or she is not a registered voter in the place where such proposal or petition is made, who signs any name other than his or her own to such proposal or petition, or who aids or abets any other person in doing any of the acts mentioned is guilty of a Class I misdemeanor. Any person who bribes or gives or pays any money or thing of value to any person directly or indirectly to induce him or her to sign such proposal or petition, who accepts money for signing such proposal or petition, or who aids or abets any other person in doing any of such acts is guilty of a Class IV felony.

(5) Upon the ballot either at the special election or at any general municipal election, the proposition or propositions shall be stated as follows:

Shall the sale of alcoholic liquor, except beer, by the drink be licensed in (here insert the name of the city or village)?

. . . . For license to sell by drink.

. . . . Against license to sell by drink.

Shall the sale of alcoholic liquor, except beer, by the package be licensed in (here insert the name of the city or village)?

. . . . For license to sell by the package.

. . . . Against license to sell by the package.

The provisions of the Election Act relating to election officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of elections, and recounts of votes, so far as applicable, shall apply to voting on the proposition or propositions under the Nebraska Liquor Control Act, and a majority vote of those voting on the question shall be mandatory upon the commission.

(6) If the question is to be submitted at a statewide primary or general election, the petitions shall be filed with the clerk of the city or village not less than sixty days prior to the election. The provisions for the required number of signers and the form of petition shall be the same as for a special election. The clerk of the city or village shall verify the signatures on the petitions with the voter registration records in the office of the county clerk or election commissioner. During the ten-day period while the petitions are being checked, no signatures shall be withdrawn and no signatures shall be added.

If the clerk of the city or village finds the petitions to be valid, he or she shall, not less than fifty days prior to the statewide primary or general election, give notice in writing to the county clerk or election commissioner that the question is to be submitted at the time of the statewide primary or general election. The election notices, issuing of the official ballots on election day, issuing of the ballots for early voting, and counting and canvassing of the ballots shall be conducted by the county clerk or election commissioner as provided in the Election Act and the official results certified to the clerk of the city or village.

(7) An election may not be held in the same city or village under this section more often than once every twenty-three months. A Class I retail license under subdivision (6)(a)(v) of section 53-124 is not subject to this section.

Source: Laws 1935, c. 116, § 48, p. 403; C.S.Supp.,1941, § 53-348; R.S.1943, § 53-122; Laws 1963, c. 309, § 1, p. 911; Laws 1963,

c. 310, § 2, p. 923; Laws 1969, c. 439, § 1, p. 1469; Laws 1973, LB 556, § 1; Laws 1977, LB 40, § 311; Laws 1984, LB 920, § 43; Laws 1988, LB 1089, § 7; Laws 1989, LB 781, § 5; Laws 1991, LB 344, § 15; Laws 1993, LB 183, § 8; Laws 1994, LB 76, § 570; Laws 1999, LB 267, § 6; Laws 2001, LB 278, § 2; Laws 2004, LB 485, § 8; Laws 2005, LB 98, § 34; Laws 2010, LB861, § 51. Effective date July 15, 2010.

Cross References

Election Act, see section 32-101.

53-123 Licenses; types.

Licenses issued by the commission shall be of the following types: (1) Manufacturer's license; (2) alcoholic liquor wholesale license, except beer; (3) beer wholesale license; (4) retail license; (5) railroad license; (6) airline license; (7) boat license; (8) nonbeverage user's license; (9) farm winery license; (10) craft brewery license; (11) shipping license; (12) special designated license; (13) catering license; and (14) microdistillery license.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1, p. 616; Laws 1947, c. 188, § 1, p. 621; Laws 1963, c. 310, § 3, p. 926; Laws 1967, c. 332, § 3, p. 881; Laws 1985, LB 279, § 3; Laws 1988, LB 1089, § 8; Laws 1991, LB 344, § 16; Laws 1996, LB 750, § 3; Laws 2004, LB 485, § 9; Laws 2007, LB549, § 5.

53-123.04 Retail license; rights of licensee; sampling; removal of unsealed bottle of wine; conditions.

(1) A retail license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as prescribed in the license, on the premises specified in the license or on the premises where catering is occurring, alcoholic liquor or beer for use or consumption but not for resale in any form except as provided in section 53-175.

(2) Nothing in the Nebraska Liquor Control Act shall prohibit a holder of a Class D license from allowing the sampling of tax-paid wine for consumption on the premises by such licensee or his or her employees in cooperation with a licensed wholesaler in the manner prescribed by the commission.

(3)(a) A restaurant holding a license to sell alcoholic liquor at retail for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased a full-course meal and consumed a portion of the bottle of wine with such full-course meal on the licensed premises. The licensee or his or her agent shall (i) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (ii) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine and the full-course meal.

(b) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(c) For purposes of this subsection, full-course meal means a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(4), p. 617; Laws 1947, c. 188, § 1(4), p. 622; Laws 1965, c. 318, § 5, p. 892; Laws 1973, LB 111, § 3; Laws 1978, LB 386, § 3; Laws 1988, LB 1089, § 9; Laws 1989, LB 441, § 3; Laws 1989, LB 154, § 2; Laws 1991, LB 344, § 20; Laws 1993, LB 53, § 2; Laws 1994, LB 859, § 4; Laws 2001, LB 278, § 3; Laws 2004, LB 485, § 12; Laws 2006, LB 562, § 2.

53-123.11 Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions.

(1) A farm winery license shall entitle the holder to:

(a) Sell wines produced at the farm winery onsite at wholesale and retail and to sell wines produced at the farm winery at off-premises sites holding the appropriate retail license;

(b) Sell wines produced at the farm winery at retail for consumption on the premises;

(c)(i) Permit a customer to remove one unsealed bottle of wine for consumption off the premises. The licensee or his or her agent shall (A) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (B) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine.

(ii) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk;

(d) Ship wines produced at the farm winery by common carrier and sold at retail to recipients in and outside the State of Nebraska, if the output of such farm winery for each calendar year as reported to the commission by December 31 of each year does not exceed thirty thousand gallons. In the event such amount exceeds thirty thousand gallons, the farm winery shall be required to use a licensed wholesaler to distribute its wines for the following calendar year, except that this requirement shall not apply to wines produced and sold onsite at the farm winery pursuant to subdivision (1)(a) of this section;

(e) Allow sampling of the wine at the farm winery and at one branch outlet in the state in reasonable amounts;

(f) Sell wines produced at the farm winery to other Nebraska farm winery licensees, in bulk, bottled, labeled, or unlabeled, in accordance with 27 C.F.R. 24.308, 27 C.F.R. 24.309, and 27 C.F.R. 24.314, as such regulations existed on January 1, 2008;

(g) Purchase distilled spirits from licensed microdistilleries in Nebraska, in bulk or bottled, made entirely from Nebraska-licensed farm winery wine to be used in the production of fortified wine at the purchasing licensed farm winery; and

(h) Store and warehouse products produced at the farm winery in a designated, secure, offsite storage facility if the holder of the farm winery license notifies the commission of the location of the facility and maintains, at the farm winery and at the facility, a separate perpetual inventory of the product stored at the facility. Consumption of alcoholic liquor at the facility is strictly prohibited.

(2) No farm winery shall manufacture wine in excess of fifty thousand gallons per year.

(3) A holder of a farm winery license may obtain a special designated license pursuant to section 53-124.11.

(4) A holder of a farm winery license may obtain an annual catering license pursuant to section 53-124.12.

Source: Laws 1985, LB 279, § 5; Laws 1991, LB 344, § 23; Laws 1997, LB 479, § 1; Laws 2003, LB 536, § 3; Laws 2006, LB 562, § 3; Laws 2008, LB1103, § 2; Laws 2010, LB861, § 52.
Effective date July 15, 2010.

53-123.12 Farm winery license; application requirements; renewal; fees.

(1) Any person desiring to obtain a new license to operate a farm winery shall:

(a) File an application with the commission in triplicate original upon such forms as the commission from time to time prescribes;

(b) Pay the license fee to the commission under sections 53-124 and 53-124.01, which fee shall be returned to the applicant if the application is denied; and

(c) Pay the nonrefundable application fee to the commission in the sum of four hundred dollars.

(2) To renew a farm winery license, a farm winery licensee shall file an application with the commission, pay the license fee under sections 53-124 and 53-124.01, and pay the renewal fee of forty-five dollars.

(3) License fees, application fees, and renewal fees may be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees.

(4) For a new license, the commission shall then notify, by registered or certified mail marked return receipt requested with postage prepaid, the municipal clerk of the city or incorporated village where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county where such license is sought of the receipt of the application and shall enclose with such notice one copy of the application. No such license shall then be issued by the commission until the expiration of at least forty-five days from the date of mailing such application by the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

Source: Laws 1985, LB 279, § 7; Laws 1988, LB 1089, § 10; Laws 1991, LB 202, § 2; Laws 2000, LB 973, § 3; Laws 2010, LB861, § 53.
Effective date July 15, 2010.

53-123.13 Farm winery; waiver of requirement; when; conditions.

(1) If the operator of a farm winery is unable to produce or purchase seventy-five percent of the grapes, fruit, or other suitable agricultural products used in the farm winery from within the state due to natural disaster which causes substantial loss to the Nebraska-grown crop, such operator may petition the commission to waive the seventy-five-percent requirement prescribed in section 53-103.13 for one year.

(2) It shall be within the discretion of the commission to waive the seventy-five-percent requirement taking into consideration the availability of products used in farm wineries in this area and the ability of such operator to produce wine from products that are abundant within the state.

(3) If the operator of a farm winery is granted a waiver, any product purchased as concentrated juice from grapes or other fruits from outside of Nebraska, when reconstituted from concentrate, may not exceed in total volume along with other products purchased the total percentage allowed by the waiver.

(4) Any product purchased under the waiver or as part of the twenty-five percent of allowable product purchased that is not Nebraska-grown for the production of wine shall not exceed the twenty-five percent volume allowed under state law if made from concentrated grapes or other fruit, when reconstituted. The concentrate shall not be reduced to less than twenty-two degrees Brix in accordance with 27 C.F.R. 24.180.

Source: Laws 1985, LB 279, § 6; Laws 1986, LB 871, § 2; Laws 1989, LB 441, § 5; Laws 1991, LB 344, § 24; Laws 1994, LB 859, § 5; Laws 2004, LB 485, § 13; Laws 2008, LB1103, § 3; Laws 2010, LB861, § 54.
Effective date July 15, 2010.

53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.

(1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler, except that a licensed wholesaler may, without a shipping license and for the purposes of subdivision (2) of section 53-161, receive beer in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the wholesaler, then transported by the wholesaler to another state for retail distribution, and then returned by the retailer to such wholesaler. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacturer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute

such wines to a licensed wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American source of supply. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a vintage wine dealer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

(4) The commission may issue a shipping license to any person who sells and ships alcoholic liquor from another state directly to a consumer in this state. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a direct sales shipping license. Until April 30, 2012, such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The application for a shipping license shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by section 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may revoke or suspend such shipping license for such period of time as it may determine.

Source: Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14; Laws 2007, LB441, § 1; Laws 2010, LB861, § 55; Laws 2010, LB867, § 1.
Effective date July 15, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB861, section 55, with LB867, section 1, to reflect all amendments.

53-123.16 Microdistillery license; rights of licensee.

Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce on the premises a maximum of ten thousand gallons of liquor per year. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdis-

tilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12 or a special designated license pursuant to section 53-124.11. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

Source: Laws 2007, LB549, § 6.

53-124 Licenses; types; classification; fees; where paid; license year.

(1) At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in section 53-124.01 and, if the applicant is an individual, provide the applicant's social security number. The commission shall issue the types of licenses described in this section.

(2) There shall be an airline license, a boat license, and a railroad license. The commission shall charge one dollar for each duplicate of an airline license or a railroad license.

(3)(a) There shall be a manufacturer's license for alcohol and spirits, for beer, and for wine. The annual fee for a manufacturer's license for beer shall be based on the barrel daily capacity as follows:

(i) 1 to 100 barrel daily capacity, or any part thereof, tier one;

(ii) 100 to 150 barrel daily capacity, tier two;

(iii) 150 to 200 barrel daily capacity, tier three;

(iv) 200 to 300 barrel daily capacity, tier four;

(v) 300 to 400 barrel daily capacity, tier five;

(vi) 400 to 500 barrel daily capacity, tier six;

(vii) 500 barrel daily capacity, or more, tier seven.

(b) For purposes of this subsection, daily capacity means 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.

(4) There shall be five classes of nonbeverage users' licenses: Class 1, Class 2, Class 3, Class 4, and Class 5.

(5) In lieu of a manufacturer's, a retailer's, or a wholesaler's license, there shall be a license to operate issued for a craft brewery, a farm winery, or a microdistillery.

(6)(a) There shall be five classes of retail licenses:

(i) Class A: Beer only, for consumption on the premises;

(ii) Class B: Beer only, for consumption off the premises, sales in the original packages only;

(iii) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only. 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;

(iv) 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; and

(v) Class I: Alcoholic liquor, for consumption on the premises.

(b) 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.

(7) There shall be three types of shipping licenses as described in section 53-123.15: Manufacturers, vintage wines, and direct sales.

(8) There shall be two types of wholesale licenses: Alcoholic liquor and beer only. The annual fee shall be paid for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling the same product.

(9) 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 section 53-124.01, 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; Laws 2010, LB861, § 56; Laws 2010, LB867, § 2. Effective date July 15, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB861, section 56, with LB867, section 2, to reflect all amendments.

53-124.01 Fees for annual licenses.

(1) The fees for annual licenses finally issued by the commission shall be as provided in this section and section 53-124.

(2) Airline license . . . $100

(3) Boat license . . . $50

(4) Manufacturer's license:

Class	Fee - In Dollars
Alcohol and spirits	1,000
Beer - tier one	100
Beer - tier two	200
Beer - tier three	350
Beer - tier four	500
Beer - tier five	650
Beer - tier six	700
Beer - tier seven	800
Wine	250

(5) Nonbeverage user's license:

Class	Fee - In Dollars
Class 1	5
Class 2	25
Class 3	50
Class 4	100
Class 5	250

(6) Operator's license:

Class	Fee - In Dollars
Craft brewery	250
Farm winery	250
Microdistillery	250

(7) Railroad license . . . $100

(8) Retail license:

Class	Fee - In Dollars
Class A	100
Class B	100
Class C	300
Class D	200
Class I	250

(9) Shipping license:

Class	Fee - In Dollars
Manufacturer	1,000
Vintage wines	1,000
Direct sales	500

(10) Wholesale license:

Class	Fee - In Dollars
Alcoholic liquor	750
Beer	500

Source: Laws 2010, LB861, § 57.
Effective date July 15, 2010.

Note: The fees in subdivision (9) have been changed to reflect the change made by Laws 2010, LB867, section 2.

53-124.11 Special designated license; issuance; procedure; fee.

(1) The commission may issue a special designated license for sale or consumption of alcoholic liquor at a designated location to a retail licensee, a craft brewery licensee, a microdistillery licensee, a farm winery licensee, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2) No retail licensee, craft brewery licensee, microdistillery licensee, farm winery licensee, organization, or corporation enumerated in subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days. This subsection shall not apply to any holder of a catering license.

(3) Except for any special designated license issued to a holder of a catering license, there shall be a fee of forty dollars for each day identified in the special designated license. Such fee shall be submitted with the application for the special designated license, collected by the commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring an application or renewal fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, craft brewery licensees, microdistillery licensees, farm winery licensees, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered to the city, village, or county clerk who shall deliver such license to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Source: Laws 1983, LB 213, § 9; Laws 1988, LB 490, § 5; Laws 1991, LB 344, § 27; Laws 1994, LB 1292, § 4; Laws 1996, LB 750, § 7; Laws 2000, LB 973, § 4; Laws 2006, LB 562, § 4; Laws 2007, LB549, § 8; Laws 2010, LB861, § 58.
Effective date July 15, 2010.

53-124.12 Annual catering license; issuance; procedure; fee; occupation tax.

(1) The holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, or a farm winery license may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, or farm winery license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application in triplicate original upon such forms as the commission prescribes; and

(b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify, by registered or certified mail, return receipt requested with postage

prepaid, (a) the clerk of the city or incorporated village in which such applicant is located or (b) if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located, of the receipt of the application. The commission shall enclose with such notice one copy of the application. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(4) The local governing body with respect to catering licensees within its liquor license jurisdiction as provided in subsection (5) of this section may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the district court of the county in which the local governing body is located.

(5) For purposes of this section, local governing body means (a) the governing body of the city or village in which the catering licensee is located or (b) if such licensee is not located within a city or village, the governing body of the county in which such licensee is located.

(6) The local governing body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the local governing body as provided in subsection (5) of this section. Such tax may not exceed double the license fee to be paid under this section.

Source: Laws 1988, LB 490, § 1; Laws 1991, LB 344, § 28; Laws 1994, LB 1292, § 5; Laws 1996, LB 750, § 8; Laws 2001, LB 278, § 5; Laws 2004, LB 485, § 17; Laws 2006, LB 562, § 5; Laws 2007, LB549, § 9; Laws 2010, LB861, § 59.
Effective date July 15, 2010.

53-124.13 Catering licensee; special designated license; application; procedure; proceeds; violation; penalty.

(1) The holder of a catering license may deliver, sell, or dispense alcoholic liquor, including beer, for consumption at premises designated in a special designated license issued pursuant to section 53-124.11.

(2) At least twenty-one days prior to the event for which the special designated license is to be used, the holder of the catering license shall file an application seeking a special designated license for the event. In addition to the information required by subsection (3) of section 53-124.11, the applicant shall inform the commission of (a) the time of the event, (b) the name of the person or organization requesting the applicant's services, (c) the opening and closing dates of the event, and (d) any other information the commission or local governing body deems necessary. A holder of a catering license shall not cater an event unless such licensee receives a special designated license for the event.

(3) If the organization for which the holder of a catering license is catering is a nonprofit organization exempted from the payment of federal income taxes, such organization may share with such licensee a part or all of the proceeds from the sale of any alcoholic liquor sold and dispensed pursuant to this section.

(4) For purposes of this section, local governing body shall mean the governing body of the city or village in which the event will be held or, if the event will not be held within the corporate limits of a city or village, the governing body of the county in which such event will be held.

(5) Only the holder of a special designated license or employees of such licensee may dispense alcoholic liquor at the event which is being catered. Violation of any provision of this section or section 53-124.12 or any rules or regulations adopted and promulgated pursuant to such sections occurring during an event being catered by such licensee may be cause to revoke, cancel, or suspend the class of retail license issued under section 53-124 held by such licensee.

Source: Laws 1988, LB 490, § 2; Laws 1991, LB 344, § 29; Laws 2010, LB861, § 60.
Effective date July 15, 2010.

53-124.14 Applicants outside cities and villages; airport authorities; Nebraska State Fair Board; issuance of licenses; when permitted.

(1) The commission may license the sale of alcoholic liquor at retail in the original package to applicants who reside in any county in which there is no incorporated city or village or in which the county seat is not located in an incorporated city or village if the licensed premises are situated in an unincorporated village having a population of twenty-five inhabitants or more.

(2) The commission may license the sale of beer at retail in any county outside the corporate limits of any city or village therein and license the sale of alcoholic liquor at retail for consumption on the premises and off the premises, sales in the original package only.

(3) The commission may license the sale of alcoholic liquor for consumption on the premises as provided in subdivision (6)(a)(iii) of section 53-124 on lands controlled by airport authorities when such land is located on and under county jurisdiction or by the Nebraska State Fair Board.

Source: Laws 1991, LB 582, § 2; Laws 2001, LB 278, § 6; Laws 2002, LB 1236, § 17; Laws 2004, LB 485, § 18; Laws 2010, LB861, § 61.
Effective date July 15, 2010.

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.

53-125 Classes of persons to whom no license issued.

No license of any kind shall be issued to (1) a person who is not a resident of Nebraska, except in case of railroad, airline, or boat licenses, (2) a person who is not of good character and reputation in the community in which he or she resides, (3) a person who is not a citizen of the United States, (4) a person who has been convicted of or has pleaded guilty to a felony under the laws of this

state, any other state, or the United States, (5) a person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to Chapter 28, article 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this subdivision on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such license if the conviction or plea occurred prior to May 18, 1983, (6) a person whose license issued under the Nebraska Liquor Control Act has been revoked for cause, (7) a person who at the time of application for renewal of any license issued under the act would not be eligible for such license upon initial application, (8) a partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, if any officer or director of the limited liability company or any member having an ownership interest in the aggregate of more than twenty-five percent of such company would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a limited liability company licensee would be ineligible to receive a license under this section for any reason, (10) a corporation, if any officer or director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a corporate licensee would be ineligible to receive a license under this section for any reason. This subdivision shall not apply to railroad licenses, (11) a person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee, (12) a person who does not own the premises for which a license is sought or does not have a lease or combination of leases on such premises for the full period for which the license is to be issued, (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant shall become eligible for a liquor license only if the commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if it is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant and (b) that such licensed premises will be properly operated, (14) a person seeking a license for premises which do not meet standards for fire safety as established by the State Fire Marshal, (15) a law enforcement officer, except that this subdivision shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization, or (16) a person less than twenty-one years of age.

When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or a person who is mentally incompetent.

Source: Laws 1935, c. 116, § 28, p. 395; C.S.Supp.,1941, § 53-328; R.S.1943, § 53-125; Laws 1957, c. 230, § 1, p. 788; Laws 1959,

c. 249, § 3, p. 864; Laws 1965, c. 318, § 7, p. 897; Laws 1967, c. 332, § 7, p. 887; Laws 1971, LB 752, § 2; Laws 1973, LB 111, § 6; Laws 1975, LB 414, § 2; Laws 1976, LB 204, § 3; Laws 1979, LB 224, § 1; Laws 1980, LB 848, § 5; Laws 1983, LB 213, § 10; Laws 1986, LB 871, § 3; Laws 1991, LB 344, § 30; Laws 1993, LB 121, § 319; Laws 1994, LB 1292, § 6; Laws 2010, LB788, § 2; Laws 2010, LB861, § 62.
Effective date July 15, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB788, section 2, with LB861, section 62, to reflect all amendments.

53-129 Retail, craft brewery, and microdistillery licenses; premises to which applicable.

Retail, craft brewery, and microdistillery licenses issued under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission and in the license issued on the application, and only one location shall be described in each license. After such license has been granted for particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by it, but in order to obtain such approval the retail, craft brewery, or microdistillery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises as added to or deleted from or to which such move is to be made comply in all respects with the requirements of the act. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the local governing body and by the commission and the licensee furnishes proof of payment of the renewal fee prescribed in subsection (4) of section 53-131.

Source: Laws 1935, c. 116, § 49, p. 405; C.S.Supp.,1941, § 53-349; R.S.1943, § 53-129; Laws 1978, LB 386, § 5; Laws 1980, LB 848, § 6; Laws 1983, LB 213, § 11; Laws 1988, LB 1089, § 12; Laws 1989, LB 781, § 8; Laws 1993, LB 183, § 10; Laws 1994, LB 1292, § 7; Laws 1999, LB 267, § 7; Laws 2004, LB 485, § 19; Laws 2007, LB549, § 10; Laws 2010, LB861, § 63.
Effective date July 15, 2010.

53-130 Licenses; manufacturers, wholesalers, railroads, airlines, boats, and nonbeverage users; conditions on issuance; fees; renewal.

(1) New licenses to manufacturers, wholesalers, railroads, airlines, boats, and nonbeverage users of alcoholic liquor may be issued by the commission upon (a) written application in duplicate filed in the manner and on such forms as the commission prescribes and in which the applicant for a beer wholesale license sets forth the sales territory in Nebraska in which it is authorized by a manufacturer or manufacturers to sell their brand or brands and the name of such brand or brands, (b) receipt of bond, (c) payment in advance of the nonrefundable application fee of forty-five dollars and the license fee, and (d) such notice and hearing as the commission fixes by its own order.

(2) A notice of such application shall be served upon the manufacturer or manufacturers listed in any application for a beer wholesale license and upon

any existing wholesaler licensed to sell the brand or brands in the described sales territory.

(3) A license so issued may be renewed without formal application upon payment of license fees and a renewal fee of forty-five dollars. The payment of such fees shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application.

Source: Laws 1935, c. 116, § 81, p. 417; C.S.Supp.,1941, § 53-381; R.S.1943, § 53-130; Laws 1959, c. 247, § 1, p. 848; Laws 1959, c. 249, § 5, p. 865; Laws 1967, c. 332, § 8, p. 888; Laws 1971, LB 234, § 19; Laws 1972, LB 66, § 2; Laws 1991, LB 202, § 3; Laws 1991, LB 344, § 32; Laws 2000, LB 973, § 5; Laws 2010, LB861, § 64.
Effective date July 15, 2010.

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

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

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

(b) The license fee if under sections 53-124 and 53-124.01 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied; and

(c) The nonrefundable application fee in the sum of four hundred dollars, except that the nonrefundable application fee for an application for a cigar bar shall be one thousand dollars.

(2) The commission shall notify, 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.

(4) For renewal of a license under this section, a licensee shall file with the commission an application, the license fee as provided in subdivision (1)(b) of this section, and a renewal fee of forty-five dollars.

Source: Laws 1935, c. 116, § 82, p. 417; C.S.Supp.,1941, § 53-382; R.S.1943, § 53-131; Laws 1955, c. 203, § 1, p. 580; Laws 1959, c. 249, § 6, p. 866; Laws 1976, LB 413, § 1; Laws 1980, LB 848, § 7; Laws 1982, LB 928, § 42; Laws 1983, LB 213, § 12; Laws 1984, LB 947, § 2; Laws 1986, LB 911, § 3; Laws 1988, LB 550, § 1; Laws 1988, LB 1089, § 13; Laws 1989, LB 781, § 9; Laws 1991, LB 202, § 4; Laws 1991, LB 344, § 34; Laws 1993, LB 183, § 11; Laws 1996, LB 750, § 9; Laws 1999, LB 267, § 8; Laws 2000, LB 973, § 6; Laws 2001, LB 278, § 7; Laws 2004, LB 485, § 20; Laws 2007, LB549, § 11; Laws 2009, LB355, § 4; Laws 2010, LB861, § 65.
Effective date July 15, 2010.

53-132 Retail, craft brewery, or microdistillery license; commission; duties.

(1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, craft brewery license, or microdistillery license to be signed by its chairperson, attested by its executive director over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) A retail license, craft brewery license, or microdistillery license may be issued to any qualified applicant if the commission finds that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to all provisions and requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

(3) In making its determination pursuant to subsection (2) of this section the commission shall consider:

(a) The recommendation of the local governing body;

(b) The existence of a citizens' protest made in accordance with section 53-133;

(c) The existing population of the city, village, or county and its projected growth;

(d) The nature of the neighborhood or community of the location of the proposed licensed premises;

(e) The existence or absence of other retail licenses, craft brewery licenses, or microdistillery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such

license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources;

(f) The existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises;

(g) The adequacy of existing law enforcement;

(h) Zoning restrictions;

(i) The sanitation or sanitary conditions on or about the proposed licensed premises; and

(j) Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.

(4) Retail licenses, craft brewery licenses, or microdistillery licenses issued or renewed by the commission shall be mailed or delivered to the clerk of the city, village, or county who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (a) the license fee if by the terms of subsection (6) of section 53-124 the fee is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the local governing body upon the application for the license, (c) the fee for publication of notice of renewal as provided in section 53-135.01, and (d) occupation taxes, if any, imposed by such city, village, or county. Notwithstanding any ordinance or charter power to the contrary, no city, village, or county shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village or within the boundaries of such county in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

(5) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

Source: Laws 1935, c. 116, § 83, p. 419; C.S.Supp.,1941, § 53-383; R.S.1943, § 53-132; Laws 1957, c. 242, § 45, p. 856; Laws 1957, c. 228, § 3, p. 780; Laws 1959, c. 246, § 1, p. 845; Laws 1959, c. 247, § 2, p. 848; Laws 1959, c. 248, § 1, p. 857; Laws 1959, c. 249, § 7, p. 867; Laws 1976, LB 413, § 2; Laws 1981, LB 124, § 2; Laws 1984, LB 947, § 3; Laws 1986, LB 911, § 4; Laws 1988, LB 1089, § 14; Laws 1989, LB 781, § 10; Laws 1989, LB 780, § 9; Laws 1991, LB 344, § 36; Laws 1993, LB 183, § 12; Laws 1999, LB 267, § 9; Laws 2004, LB 485, § 21; Laws 2006, LB 845, § 2; Laws 2007, LB549, § 12; Laws 2010, LB861, § 66. Effective date July 15, 2010.

53-133 Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure.

(1) The commission shall set for hearing before it any application for a retail license, craft brewery license, or microdistillery license relative to which it has received:

(a) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, a recommendation of denial from the city, village, or county;

(b) Within ten days after the receipt of a recommendation from the city, village, or county, or, if no recommendation is received, within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections in writing by not less than three persons residing within such city, village, or county, protesting the issuance of the license. Withdrawal of the protest does not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued;

(c) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections by the commission or any duly appointed employee of the commission, protesting the issuance of the license; or

(d) An indication on the application that the location of a proposed retail establishment is within one hundred fifty feet of a church as described in subsection (2) of section 53-177.

(2) Hearings upon such applications shall be in the following manner: Notice indicating the time and place of such hearing shall be mailed to the applicant, the local governing body, each individual protesting a license pursuant to subdivision (1)(b) of this section, and any church affected as described in subdivision (1)(d) of this section, by certified mail, return receipt requested, at least fifteen days prior to such hearing. The notice shall state that the commission will receive evidence for the purpose of determining whether to approve or deny the application. Mailing to the attorney of record of a party shall be deemed to fulfill the purposes of this section. The commission may receive evidence, including testimony and documentary evidence, and may hear and question witnesses concerning the application.

Source: Laws 1935, c. 116, § 84, p. 420; C.S.Supp.,1941, § 53-384; R.S.1943, § 53-133; Laws 1959, c. 249, § 8, p. 868; Laws 1961, c. 260, § 1, p. 774; Laws 1976, LB 413, § 3; Laws 1979, LB 224, § 2; Laws 1983, LB 213, § 13; Laws 1986, LB 911, § 5; Laws 1988, LB 550, § 2; Laws 1989, LB 781, § 11; Laws 1993, LB 183, § 13; Laws 1999, LB 267, § 10; Laws 2004, LB 485, § 22; Laws 2007, LB549, § 13; Laws 2010, LB861, § 67.
Effective date July 15, 2010.

53-134 Retail, craft brewery, and microdistillery licenses; city and village governing bodies; county boards; powers, functions, and duties.

The local governing body of any city or village with respect to licenses within its corporate limits and the local governing body of any county with respect to licenses not within the corporate limits of any city or village but within the county shall have the following powers, functions, and duties with respect to retail, craft brewery, and microdistillery licenses:

(1) To cancel or revoke for cause retail, craft brewery, or microdistillery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at

such time examine the premises of such licensee in connection with such determination;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act;

(4) To receive retail license fees, craft brewery license fees, and microdistillery license fees as provided in sections 53-124 and 53-124.01 and pay the same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, craft brewery licensee, or microdistillery licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the local governing body may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133; and

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

Source: Laws 1935, c. 116, § 85, p. 421; C.S.Supp.,1941, § 53-385; R.S.1943, § 53-134; Laws 1949, c. 169, § 1(1), p. 447; Laws 1959, c. 249, § 9, p. 868; Laws 1967, c. 332, § 9, p. 888; Laws

1983, LB 213, § 14; Laws 1984, LB 947, § 4; Laws 1986, LB 911, § 6; Laws 1988, LB 550, § 3; Laws 1988, LB 352, § 92; Laws 1988, LB 1089, § 15; Laws 1989, LB 781, § 12; Laws 1989, LB 780, § 10; Laws 1991, LB 344, § 37; Laws 1993, LB 183, § 14; Laws 1999, LB 267, § 11; Laws 2001, LB 278, § 8; Laws 2004, LB 485, § 23; Laws 2007, LB549, § 14; Laws 2010, LB861, § 68.
Effective date July 15, 2010.

53-134.03 Retail, craft brewery, and microdistillery licenses; regulation by cities and villages.

The governing bodies of cities and villages are authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, craft brewery, or microdistillery licensees carried on within the corporate limits of the city or village.

Source: Laws 1935, c. 116, § 104, p. 429; C.S.Supp.,1941, § 53-3,104; R.S.1943, § 53-147; Laws 1980, LB 848, § 11; Laws 1989, LB 781, § 14; R.S.Supp.,1990, § 53-147; Laws 1991, LB 344, § 38; Laws 1993, LB 183, § 16; Laws 1999, LB 267, § 12; Laws 2004, LB 485, § 24; Laws 2007, LB549, § 15.

53-135 Retail licenses; automatic renewal; conditions; licensed premises within annexed area; effect.

A retail license issued by the commission and outstanding may be automatically renewed by the commission without formal application upon payment of the renewal fee and license fee if payable to the commission. The payment shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application, and the commission shall at any time require a licensee to submit an application if requested in writing to do so by the local governing body.

If a licensee files an application form in triplicate original upon seeking renewal of his or her license, the application shall be processed as set forth in section 53-131.

Any licensed retail premises located in an area which is annexed to any governmental subdivision shall file a formal application for a license, and while such application is pending, the licensee may continue all license privileges until the original license expires or is canceled or revoked. If such license expires within sixty days following the annexation date of such area, the license may be renewed by order of the commission for not more than one year.

Source: Laws 1935, c. 116, § 86, p. 421; C.S.Supp.,1941, § 53-386; R.S.1943, § 53-135; Laws 1959, c. 249, § 10, p. 870; Laws 1983, LB 213, § 15; Laws 1984, LB 820, § 1; Laws 1988, LB 1089, § 16; Laws 1991, LB 344, § 40; Laws 2004, LB 485, § 26; Laws 2010, LB861, § 69.
Effective date July 15, 2010.

53-138.01 Licenses; disposition of fees.

The State Treasurer shall credit three hundred ninety-five dollars of each four-hundred-dollar application fee and forty dollars of each forty-five-dollar application fee and each renewal fee to the General Fund and the remaining five dollars to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund to be used for providing licensees with materials pursuant to section 53-117.05. All retail license fees received by the city or village treasurer, as the case may be, shall inure to the school fund of the district lying wholly or partially within the corporate limits of such city or village. Except as otherwise provided in section 53-123.15, the State Treasurer shall distribute license fees received by the commission for licenses issued pertaining to alcoholic liquor, including beer, in accordance with Article VII, section 5, of the Constitution of Nebraska. All retail license fees received by the county treasurer, as provided in section 53-124, shall be credited to the school fund of the county.

Source: Laws 1935, c. 116, § 92, p. 424; C.S.Supp.,1941, § 53-392; R.S.1943, § 53-138; Laws 1949, c. 169, § 2(2), p. 448; Laws 1953, c. 180, § 2, p. 570; Laws 1959, c. 249, § 12, p. 872; Laws 1988, LB 1089, § 17; Laws 1991, LB 202, § 5; Laws 1997, LB 345, § 1; Laws 2000, LB 973, § 7; Laws 2010, LB861, § 70; Laws 2010, LB867, § 3.
Effective date July 15, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB861, section 70, with LB867, section 3, to reflect all amendments.

53-139 Retail licenses to restaurants and clubs; conditions.

No person shall receive a retail license to sell alcoholic liquor upon any premises used as a restaurant or as a club unless such premises or plan of operation strictly complies with sections 53-103.09 and 53-103.30.

Source: Laws 1935, c. 116, § 93, p. 425; C.S.Supp.,1941, § 53-393; R.S.1943, § 53-139; Laws 1989, LB 441, § 6; Laws 1994, LB 859, § 6; Laws 2010, LB861, § 71.
Effective date July 15, 2010.

53-149 Licenses; term; sale of premises; temporary operating permit; false information; penalty; license not assignable or inheritable; exception; effect of death or bankruptcy of licensee.

(1) A license shall be purely a personal privilege, good for not to exceed one year after issuance unless sooner revoked as provided in the Nebraska Liquor Control Act, and shall not constitute property, nor shall it be subject to attachment, garnishment, or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated.

(2) A license issued under the act terminates immediately upon the sale of the licensed premises named in such license. The purchaser or transferee may submit an application for a license under the act prior to closing such sale or transfer. While such application is pending, the purchaser may request and obtain a temporary operating permit from the commission which shall authorize the purchaser to continue the business which was conducted on the purchased premises under the terms and conditions of the terminated license for ninety days or until the purchaser has obtained a license in its own name, whichever occurs sooner. Prior to the issuance of a temporary operating permit, the purchaser shall supply the commission with documentation from the seller that the seller is current on all accounts with any wholesaler under

section 53-123.02. A seller who provides false information regarding such accounts is guilty of a Class IV misdemeanor for each offense. In the absence of such temporary operating permit, the purchaser shall not manufacture, store, or sell alcoholic liquor on the purchased premises until the purchaser has obtained a license in the purchaser's own name. If the application is withdrawn by the applicant or is denied by the commission, the previous license may be reinstated at the discretion of the commission upon request by the previous licensee.

(3) A license shall not descend by the laws of testate or intestate devolution, but it shall cease upon the death of the licensee, except that (a) executors or administrators of the estate of any deceased licensee, when such estate consists in part of alcoholic liquor, or a partnership or limited liability company upon the death of one or more of the partners or members, may continue the business of the sale or manufacture of alcoholic liquor under order of the appropriate court and may exercise the privileges of the deceased or deceased partner or member after the death of such decedent until the expiration of such license, but if such license would have expired within two months following the death of the licensee, the license may be renewed by the administrators or executors with the approval of the appropriate court for a period not to exceed one additional year; or (b) when a license is issued to a husband and wife, as colicensees with rights of survivorship, upon the death of one spouse the survivor may exercise all rights and privileges under such license in his or her own name. The trustee of any insolvent or bankrupt licensee, when such estate consists in part of alcoholic liquor, may continue the business of the sale or manufacture of alcoholic liquor under order of the appropriate court and may exercise the privileges of the insolvent or bankrupt licensee until the expiration of such license.

Source: Laws 1935, c. 116, § 27, p. 394; C.S.Supp.,1941, § 53-327; R.S.1943, § 53-149; Laws 1959, c. 249, § 16, p. 874; Laws 1972, LB 1375, § 1; Laws 1976, LB 204, § 5; Laws 1993, LB 121, § 320; Laws 2010, LB861, § 72.
Effective date July 15, 2010.

(f) TAX

53-163 Commission; rounding of amounts on returns or reports; authorized.

When the commission finds that the administration of the state alcohol excise tax laws might be more efficiently and economically conducted, the commission may require or allow for rounding of all amounts on returns or reports, including amounts of tax. Amounts shall be rounded to the nearest dollar with amounts ending in fifty cents or more rounded to the next highest dollar.

Source: Laws 2007, LB578, § 2.

53-164.01 Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid.

Payment of the tax provided for in section 53-160 on alcoholic liquor shall be paid by the manufacturer or wholesaler as follows:

(1)(a) All manufacturers or wholesalers, except farm winery producers, whether inside or outside this state shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made,

submit a report to the commission upon forms furnished by the commission showing the total amount of alcoholic liquor in gallons or fractional parts thereof shipped by such manufacturer or wholesaler, whether inside or outside this state, during the preceding calendar month;

(b) All beer wholesalers shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof shipped by all manufacturers, whether inside or outside this state, during the preceding calendar month to such wholesaler;

(c)(i) Except as provided in subdivision (ii) of this subdivision, farm winery producers which paid less than one thousand dollars of excise taxes pursuant to section 53-160 for the previous calendar year and which will pay less than one thousand dollars of excise taxes pursuant to section 53-160 for the current calendar year shall, on or before the twenty-fifth day of the calendar month following the end of the year in which wine was packaged or bottled for sale, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged or bottled by such producer during the preceding calendar year; and

(ii) Farm winery producers which paid one thousand dollars or more of excise taxes pursuant to section 53-160 for the previous calendar year or which become liable for one thousand dollars or more of excise taxes pursuant to section 53-160 during the current calendar year shall, on or before the twenty-fifth day of each calendar month following the month in which wine was packaged or bottled for sale, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged or bottled by such producer during the preceding calendar month. A farm winery producer which becomes liable for one thousand dollars or more of excise taxes pursuant to section 53-160 during the current calendar year shall also pay such excise taxes immediately;

(d) A craft brewery shall, on or before the twenty-fifth day of each calendar month following the month in which the beer was produced for sale, submit a report to the commission on forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof produced for sale by the craft brewery during the preceding calendar month;

(e) A microdistillery shall, on or before the twenty-fifth day of each calendar month following the month in which the distilled liquor was produced for sale, submit a report to the commission on forms furnished by the commission showing the total amount of distilled liquor in gallons or fractional parts thereof produced for sale by the microdistillery during the preceding calendar month; and

(f) Reports submitted pursuant to subdivision (a), (b), or (c) of this subdivision shall also contain a statement of the total amount of alcoholic liquor, except beer, in gallons or fractional parts thereof shipped to licensed retailers inside this state and such other information as the commission may require;

(2) The wholesaler or farm winery producer shall at the time of the filing of the report pay to the commission the tax due on alcoholic liquor, except beer, shipped to licensed retailers inside this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the wholesaler on beer shipped from all manufacturers;

(3) The tax imposed pursuant to section 53-160 shall be due on the date the report is due less a discount of one percent of the tax on alcoholic liquor for submitting the report and paying the tax in a timely manner. The discount shall be deducted from the payment of the tax before remittance to the commission and shall be shown in the report to the commission as required in this section. If the tax is not paid within the time provided in this section, the discount shall not be allowed and shall not be deducted from the tax;

(4) If the report is not submitted by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, the following penalties shall be assessed on the amount of the tax: One to five days late, three percent; six to ten days late, six percent; and over ten days late, ten percent. In addition, interest on the tax shall be collected at the rate of one percent per month, or fraction of a month, from the date the tax became due until paid;

(5) No tax shall be levied or collected on alcoholic liquor manufactured inside this state and shipped or transported outside this state for sale and consumption outside this state;

(6) In order to insure the payment of all state taxes on alcoholic liquor, together with interest and penalties, persons required to submit reports and payment of the tax shall, at the time of application for a license under sections 53-124 and 53-124.01, enter into a surety bond with corporate surety, both the bond form and surety to be approved by the commission. Subject to the limitations specified in this subdivision, the amount of the bond required of any taxpayer shall be fixed by the commission and may be increased or decreased by the commission at any time. In fixing the amount of the bond, the commission shall require a bond equal to the amount of the taxpayer's estimated maximum monthly excise tax ascertained in a manner as determined by the commission. Nothing in this section shall prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. The amount of a bond required of any one taxpayer shall not be less than one thousand dollars. The bonds required by this section shall be filed with the commission; and

(7) When a manufacturer or wholesaler sells and delivers alcoholic liquor upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or wholesaler shall be entitled to a credit in the amount of the tax paid in the event no tax is due on such alcoholic liquor as provided in such section. The amount of the credit, if any, shall be deducted from the tax due on the following monthly report and subsequent reports until liquidated.

Source: Laws 1955, c. 201, § 3, p. 571; Laws 1959, c. 247, § 6, p. 853; Laws 1959, c. 251, § 1, p. 880; Laws 1967, c. 334, § 1, p. 892; Laws 1972, LB 66, § 4; Laws 1973, LB 111, § 8; Laws 1979, LB 224, § 5; Laws 1981, LB 124, § 3; Laws 1983, LB 213, § 18; Laws 1985, LB 279, § 10; Laws 1985, LB 359, § 3; Laws 1988, LB 1089, § 23; Laws 1989, LB 777, § 1; Laws 1989, LB 780, § 12; Laws 1991, LB 344, § 47; Laws 1991, LB 582, § 3; Laws 1994, LB 1292, § 8; Laws 1996, LB 750, § 10; Laws 2006, LB 1003, § 3; Laws 2007, LB549, § 16; Laws 2010, LB861, § 73. Effective date July 15, 2010.

(g) MANUFACTURER'S AND WHOLESALER'S RECORD AND REPORT

53-165 Manufacturer and wholesaler; monthly report to commission of manufacture and sale; manufacturer or shipper; certification; record keeping.

(1) Every manufacturer and wholesaler shall, between the first and fifteenth day of each calendar month, make return to the commission of all alcoholic liquor manufactured and sold by such manufacturer or wholesaler in the course of such business during the preceding calendar month. Such return shall be made upon forms prescribed and furnished by the commission and shall contain such other information as the commission may reasonably require.

(2) Every manufacturer or shipper of beer on filing notice of intention to commence or continue business pursuant to section 53-130.01 shall certify that such manufacturer or shipper will keep or cause to be kept books and records and make reports in the manner and for the purposes specified by rules and regulations of the commission, which books, records, and reports shall be open to inspection by the proper officers of the commission, and that such manufacturer or shipper will in all respects faithfully comply with all of the requirements of the laws of this state and the rules and regulations of the commission relating to the manufacture and shipping to licensed retail beer dealers in this state.

(3) Each manufacturer and wholesaler shall keep complete and accurate records of all sales of liquor, wine, or beer and complete and accurate records of all such alcoholic liquor produced, manufactured, compounded, or imported.

Source: Laws 1935, c. 116, § 55, p. 408; C.S.Supp.,1941, § 53-355; R.S.1943, § 53-165; Laws 1991, LB 344, § 50; Laws 2006, LB 1003, § 4.

(h) KEG SALES

53-167.03 Keg identification number; prohibited acts; violation; penalty; deposit.

(1) Any person who unlawfully tampers with, alters, or removes the keg identification number from a beer container or is in possession of a beer container described in section 53-167.02 with an altered or removed keg identification number after such container has been taken from the licensed premises pursuant to a retail sale and before its return to such licensed premises or other place where returned kegs are accepted shall be guilty of a Class III misdemeanor.

(2) A licensee may require a deposit of not more than the replacement cost of the container described in section 53-167.02 from a person purchasing beer for consumption off the premises. Such deposit may be retained by the licensee, in the amount of actual damages, if upon return the container or any associated equipment is damaged or if the keg identification number has been unlawfully tampered with, altered, or removed and such tampering, alteration, or removal has been reported to a law enforcement officer.

Source: Laws 1993, LB 332, § 4; Laws 2002, LB 1126, § 5; Laws 2007, LB573, § 10.

53-167.04 Repealed. Laws 2006, LB 562, § 8.

(i) PROHIBITED ACTS

53-169 Manufacturer or wholesaler; craft brewery or microdistillery licensee; limitations.

(1) No manufacturer or wholesaler shall directly or indirectly: (a) Pay for any license to sell alcoholic liquor at retail or advance, furnish, lend, or give money for payment of such license; (b) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (c) be interested in the ownership, conduct, or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (d) be interested directly or indirectly or as owner, part owner, lessee, or lessor thereof in any premises upon which alcoholic liquor is sold at retail.

(2) This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Source: Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 3, p. 574; Laws 1961, c. 258, § 5, p. 765; Laws 1971, LB 751, § 5; Laws 1981, LB 483, § 3; Laws 1985, LB 279, § 11; Laws 1985, LB 183, § 5; Laws 1988, LB 1089, § 24; Laws 1991, LB 344, § 54; Laws 1996, LB 750, § 11; Laws 2007, LB549, § 17.

53-169.01 Manufacturer; interest in licensed wholesaler; prohibitions.

No manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor, except beer, for distribution and sale within this state shall, directly or indirectly, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage, or lien on any personal or real property, or as guarantor, endorser, or surety, be interested in the ownership, conduct, operation, or management of any alcoholic liquor wholesaler holding an alcoholic liquor wholesale license, except beer, under section 53-123.02.

No manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor, except beer, for distribution and sale within this state shall be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, or trusteeship in the premises upon which the place of business of an alcoholic liquor wholesaler holding an alcoholic liquor wholesale license, except beer, under section 53-123.02 is located, established, conducted, or operated in whole or in

part unless such interest was acquired or became effective prior to April 17, 1947.

Source: Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 4, p. 575; Laws 1959, c. 250, § 2, p. 876; Laws 1969, c. 441, § 3, p. 1477; Laws 1991, LB 344, § 55; Laws 2007, LB578, § 3; Laws 2010, LB861, § 74.
Effective date July 15, 2010.

53-171 Licenses; issuance of more than one kind to same person; when unlawful; craft brewery or microdistillery licensee; limitations.

No person licensed as a manufacturer or wholesaler of alcoholic liquor shall be permitted to receive any retail license at the same time. No person licensed as a retailer of alcoholic liquor shall be permitted to receive any manufacturer's or wholesale license at the same time. This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Source: Laws 1935, c. 116, § 30, p. 397; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-171; Laws 1953, c. 182, § 1, p. 573; Laws 1969, c. 441, § 4, p. 1478; Laws 1985, LB 279, § 12; Laws 1988, LB 1089, § 25; Laws 1991, LB 344, § 56; Laws 1996, LB 750, § 12; Laws 2007, LB549, § 18.

53-172 Original packages; labels; seals; requirements.

No manufacturer or wholesaler shall sell or deliver any original package containing alcoholic liquor, except beer and wine, manufactured or distributed by him or her unless the package has affixed thereto a clear and legible label containing the name and address of the manufacturer, the kind of alcoholic liquor contained in the package, and, in the case of alcoholic liquor other than beer, the date when manufactured. No original package of alcoholic liquor shall be delivered by any manufacturer or wholesaler unless the package is securely sealed so that the contents cannot be removed without breaking the seal placed thereon by such manufacturer, and no other licensee shall sell, have in his or her possession, or use any original package which does not comply with this section or which does not bear evidence that such original package, when delivered to him or her, complied with this section.

Source: Laws 1935, c. 116, § 31, p. 397; C.S.Supp.,1941, § 53-331; R.S.1943, § 53-172; Laws 1955, c. 201, § 5, p. 575; Laws 1961, c. 259, § 11, p. 773; Laws 1963, c. 311, § 6, p. 939; Laws 1989, LB 780, § 13; Laws 1991, LB 344, § 57; Laws 2010, LB861, § 75.
Effective date July 15, 2010.

53-174 Repealed. Laws 2010, LB 861, § 85.

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

(1) Except as otherwise provided in subsection (2) of this section, no license shall be issued for the sale at retail of any alcoholic liquor within one hundred fifty feet of any church, school, hospital, or home for aged or indigent persons or for veterans, their wives or children. This prohibition does not apply (a) to any location within such distance of one hundred fifty feet for which a license to sell alcoholic liquor at retail has been granted by the 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) If a proposed location for the sale at retail of any alcoholic liquor is within one hundred fifty feet of any church, a license may be issued if the commission gives notice to the affected church and holds a hearing as prescribed in section 53-133.

(3) 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; Laws 2010, LB861, § 76.
Effective date July 15, 2010.

53-179 Sale or dispensing of alcoholic liquor; forbidden during certain hours; exceptions; alcoholic liquor in open containers; unlawful after hours.

(1) No alcoholic liquor, including beer, shall be sold at retail or dispensed on any day between the hours of 1 a.m. and 6 a.m., except that the local governing body of any city or village with respect to area inside the corporate limits of such city or village, or the county board with respect to area outside the corporate limits of any city or village, may by ordinance or resolution (a) require closing prior to 1 a.m. on any day or (b) if adopted by a vote of at least two-thirds of the members of such local governing body or county board, permit retail sale or dispensing of alcoholic liquor for consumption on the premises, excluding sales for consumption off the premises, later than 1 a.m. and prior to 2 a.m. on any day.

(2) Except as provided for and allowed by ordinance of a local governing body applicable to area inside the corporate limits of a city or village or by resolution of a county board applicable to area inside such county and outside

the corporate limits of any city or village, no alcoholic liquor, including beer, shall be sold at retail or dispensed between the hours of 6 a.m. Sunday and 1 a.m. Monday. No ordinance or resolution allowed by this subsection shall permit alcoholic liquor, other than beer and wine, to be sold at retail or dispensed between the hours of 6 a.m. Sunday and 12 noon Sunday. This subsection shall not apply after 12 noon on Sunday to a licensee which is a nonprofit corporation and the holder of a Class C license or a Class I license.

(3) It shall be unlawful on property licensed to sell alcoholic liquor at retail to allow alcoholic liquor in open containers to remain or be in possession or control of any person for purposes of consumption between the hours of fifteen minutes after the closing hour applicable to the licensed premises and 6 a.m. on any day.

(4) Nothing in this section shall prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic liquor is prohibited by this section.

Source: Laws 1935, c. 116, § 37, p. 399; Laws 1941, c. 107, § 1, p. 429; C.S.Supp.,1941, § 53-337; R.S.1943, § 53-179; Laws 1955, c. 202, § 2, p. 579; Laws 1957, c. 232, § 1, p. 791; Laws 1963, c. 310, § 12, p. 934; Laws 1963, Spec. Sess., c. 5, § 4, p. 82; Laws 1965, c. 318, § 10, p. 900; Laws 1967, c. 336, § 2, p. 902; Laws 1974, LB 681, § 7; Laws 1976, LB 204, § 6; Laws 1978, LB 386, § 8; Laws 1979, LB 514, § 1; Laws 1981, LB 217, § 1; Laws 1983, LB 213, § 19; Laws 1991, LB 354, § 1; Laws 1991, LB 344, § 61; Laws 2004, LB 485, § 29; Laws 2010, LB861, § 77.
Effective date July 15, 2010.

53-180.02 Minor; prohibited acts; exception; governing bodies; powers.

Except as provided in section 53-168.06, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor as a part of a bona fide religious rite, ritual, or ceremony or in his or her permanent place of residence.

The governing bodies of counties, cities, and villages shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the transportation, consumption, or knowing possession of or having under his or her control beer or other alcoholic liquor in or transported by any motor vehicle, by any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.

Source: Laws 1951, c. 174, § 1(3), p. 664; Laws 1955, c. 205, § 1, p. 584; Laws 1957, c. 233, § 1, p. 792; Laws 1965, c. 323, § 1, p. 915; Laws 1967, c. 337, § 1, p. 904; Laws 1969, c. 440, § 2, p. 1473; Laws 1980, LB 221, § 3; Laws 1980, LB 848, § 18; Laws 1981, LB 124, § 4; Laws 1984, LB 56, § 2; Laws 1991, LB 344, § 62; Laws 2001, LB 114, § 4; Laws 2007, LB573, § 11.

53-180.05 Minors and incompetents; violations; penalties; false identification; penalty; law enforcement agency; duties.

(1) Any person violating section 53-180 shall be guilty of a Class I misdemeanor. Any person violating any of the provisions of section 53-180.01 or 53-180.03 shall be guilty of a Class III misdemeanor. Any person older than eighteen years of age and under the age of twenty-one years violating section 53-180.02 is guilty of a Class III misdemeanor. Any person eighteen years of age or younger violating section 53-180.02 is guilty of a misdemeanor as provided in section 53-181 and shall be punished as provided in such section.

(2) Any person who knowingly manufactures, creates, or alters any form of identification for the purpose of sale or delivery of such form of identification to a person under the age of twenty-one years shall be guilty of a Class I misdemeanor. For purposes of this subsection, form of identification means any card, paper, or legal document that may be used to establish the age of the person named thereon for the purpose of purchasing alcoholic liquor.

(3) When a minor is arrested for a violation of sections 53-180 to 53-180.02 or subsection (2) of this section, the law enforcement agency employing the arresting peace officer shall make a reasonable attempt to notify such minor's parent or guardian of the arrest.

Source: Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(6), p. 664; Laws 1963, c. 313, § 2, p. 943; Laws 1969, c. 444, § 1, p. 1482; Laws 1973, LB 25, § 3; Laws 1977, LB 40, § 315; Laws 1982, LB 869, § 1; Laws 1984, LB 56, § 4; Laws 1985, LB 493, § 2; Laws 1989, LB 440, § 1; Laws 1991, LB 454, § 1; Laws 2001, LB 114, § 6; Laws 2010, LB258, § 2.
Effective date July 15, 2010.

53-181 Person eighteen years of age or younger; penalty; copy of abstract to Director of Motor Vehicles.

The penalty for violation of section 53-180.02 by a person eighteen years of age or younger shall be as follows:

(1) If the person convicted or adjudicated of violating such section has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(a) For the first offense, such person is guilty of a Class III misdemeanor and the court may, as a part of the judgment of conviction or adjudication, impound any such licenses or permits for thirty days and require such person to attend an alcohol education class;

(b) For a second offense, such person is guilty of a Class III misdemeanor and the court, as a part of the judgment of conviction or adjudication, may (i) impound any such licenses or permits for ninety days and (ii) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend an alcohol education class; and

(c) For a third or subsequent offense, such person is guilty of a Class III misdemeanor and the court, as a part of the judgment of conviction or adjudication, may (i) impound any such licenses or permits for twelve months and (ii) require such person to complete no fewer than sixty hours of communi-

ty service, to attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor; and

(2) If the person convicted or adjudicated of violating such section does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(a) For the first offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (i) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (ii) require such person to attend an alcohol education class;

(b) For a second offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (i) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (ii) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend an alcohol education class; and

(c) For a third or subsequent offense, such person is guilty of a Class III misdemeanor and the court, as part of the judgment of conviction or adjudication, may (i) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (ii) require such person to complete no fewer than sixty hours of community service, to attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04.

Source: Laws 2010, LB258, § 3.
Effective date July 15, 2010.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

53-188 Governmental subdivision under prohibition; effect on licenses.

No person shall operate a craft brewery or microdistillery or sell alcoholic liquor at retail, and the commission shall not grant, issue, or cause to be granted or issued any license to operate a craft brewery or microdistillery or to sell alcoholic liquor at retail, within the limits of any governmental subdivision of this state while a prohibition against such sales arising under sections 53-121 and 53-122 or otherwise as provided in the Nebraska Liquor Control Act is in effect, and any such license granted or issued in violation thereof shall be void. This section shall not prohibit the issuance of a manufacturer's or wholesale license in accordance with law by the commission in such prohibited territory.

Source: Laws 1935, c. 116, § 59, p. 408; C.S.Supp.,1941, § 53-359; R.S.1943, § 53-188; Laws 1988, LB 1089, § 28; Laws 1991, LB 344, § 68; Laws 1996, LB 750, § 13; Laws 2007, LB549, § 19.

(j) PENALTIES

53-1,104 Violations by licensee; suspension, cancellation, or revocation of license; cash penalty in lieu of suspending sales; election authorized.

(1) Any licensee which sells or permits the sale of any alcoholic liquor not authorized under the terms of such license on the licensed premises or in connection with such licensee's business or otherwise shall be subject to suspension, cancellation, or revocation of such license by the commission.

(2) When an order suspending a license to sell alcoholic liquor becomes final, the licensee may elect to pay a cash penalty to the commission in lieu of suspending sales of alcoholic liquor for the designated period if such election is not prohibited by order of the commission. Except as otherwise provided in subsection (3) of this section, for the first such suspension for any licensee, the penalty shall be fifty dollars per day, and for a second or any subsequent suspension, the penalty shall be one hundred dollars per day.

(3)(a) For a second suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed forty-eight hours and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, second suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and second suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02;

(b) For a third or subsequent suspension for violation of section 53-180 or 53-180.02 occurring within four years after the date of the first suspension, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for a period of time not to exceed fifteen days and that the licensee may not elect to pay a cash penalty. The commission may use the required suspension of sales of alcoholic liquor penalty either alone or in conjunction with suspension periods for which the licensee may elect to pay a cash penalty. For purposes of this subsection, third or subsequent suspension for violation of section 53-180 shall include suspension for a violation of section 53-180.02 following suspension for a violation of section 53-180 and third or subsequent suspension for violation of section 53-180.02 shall include suspension for a violation of section 53-180 following suspension for a violation of section 53-180.02; and

(c) For a first suspension based upon a finding that a licensee or an employee or agent of the licensee has been convicted of possession of a gambling device on a licensee's premises in violation of sections 28-1107 to 28-1111, the commission, in its discretion, may order that the licensee be required to suspend sales of alcoholic liquor for thirty days and that the licensee may not elect to pay a cash penalty. For a second or subsequent suspension for such a violation of sections 28-1107 to 28-1111 occurring within four years after the date of the first suspension, the commission shall order that the license be canceled.

(4) For any licensee which has no violation for a period of four years consecutively, any suspension shall be treated as a new first suspension.

(5) The election provided for in subsection (2) of this section shall be filed with the commission in writing one week before the suspension is ordered to commence and shall be accompanied by payment in full of the sum required by

this section. If such election has not been received by the commission by the close of business one week before the day such suspension is ordered to commence, it shall be conclusively presumed that the licensee has elected to close for the period of the suspension and any election received later shall be absolutely void and the payment made shall be returned to the licensee. The election shall be made on a form prescribed by the commission. The commission shall remit all funds collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1935, c. 116, § 105, p. 429; C.S.Supp.,1941, § 53-3,105; R.S.1943, § 53-1,104; Laws 1977, LB 40, § 320; Laws 1980, LB 848, § 20; Laws 1991, LB 344, § 71; Laws 1991, LB 586, § 2; Laws 1999, LB 267, § 15; Laws 2000, LB 973, § 9; Laws 2003, LB 205, § 3; Laws 2010, LB861, § 78.
Effective date July 15, 2010.

(k) PROSECUTION AND ENFORCEMENT

53-1,115 Proceedings before commission; service upon parties; rehearings; costs.

(1) A copy of the rule, regulation, order, or decision of the commission denying an application or suspending, canceling, or revoking a license or of any notice required by any proceeding before it, certified under the seal of the commission, shall be served upon each party of record to the proceeding before the commission. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the commission shall enter his or her appearance and indicate to the commission his or her address for such service. The mailing of a copy of any rule, regulation, order, or decision of the commission or of any notice by the commission, in the proceeding, to such party at such address shall be deemed to be service upon such party.

(2) Within thirty days after the service of any rule, regulation, order, or decision of the commission suspending, canceling, or revoking any license upon any party to the proceeding, as provided for by subsection (1) of this section, such party may apply for a rehearing with respect to any matters determined by the commission. The commission shall receive and consider such application for a rehearing within thirty days after its filing with the executive director of the commission. If such application for rehearing is granted, the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any decision of the commission except as provided in section 53-1,116.

(3) Upon final disposition of any proceeding, costs shall be paid by the party or parties against whom a final decision is rendered. Costs may be taxed or retaxed to local governing bodies as well as individuals. Only one rehearing referred to in subsection (2) of this section shall be granted by the commission on application of any one party.

(4) For purposes of this section, party of record means:

(a) In the case of an administrative proceeding before the commission on the application for a retail, craft brewery, or microdistillery license:

(i) The applicant;

(ii) Each individual protesting the issuance of such license pursuant to subdivision (1)(b) of section 53-133;

(iii) The local governing body if it is entering an appearance to protest the issuance of the license or if it is requesting a hearing pursuant to subdivision (1)(c) of section 53-133; and

(iv) The commission;

(b) In the case of an administrative proceeding before a local governing body to cancel or revoke a retail, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The local governing body; and

(c) In the case of an administrative proceeding before the commission to suspend, cancel, or revoke a retail, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The commission.

Source: Laws 1989, LB 781, § 15; Laws 1993, LB 183, § 17; Laws 1999, LB 267, § 16; Laws 2004, LB 485, § 30; Laws 2007, LB549, § 20.

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.

ARTICLE 2

BEER DISTRIBUTION

Section
53-208. Good faith, defined.

53-208 Good faith, defined.

Good faith shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

Source: Laws 1989, LB 371, § 8; Laws 2005, LB 570, § 2.

ARTICLE 3

NEBRASKA GRAPE AND WINERY BOARD

Section
53-304. Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

53-304 Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) of section 53-123.15 and from gifts, grants, or bequests shall be remitted to the State

Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. 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 477, § 4; Laws 2003, LB 536, § 4; Laws 2007, LB441, § 7.

Cross References

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

ARTICLE 4
MINOR ALCOHOLIC LIQUOR LIABILITY ACT

Section
53-401. Act, how cited.
53-402. Purposes of act.
53-403. Terms, defined.
53-404. Cause of action authorized.
53-405. Defense.
53-406. Limitation on cause of action.
53-407. Damages.
53-408. Statute of limitation.
53-409. Effect of settlement and release; offset; joint and several liability; right of contribution.

53-401 Act, how cited.

Sections 53-401 to 53-409 shall be known and may be cited as the Minor Alcoholic Liquor Liability Act.

Source: Laws 2007, LB573, § 1.

53-402 Purposes of act.

The purposes of the Minor Alcoholic Liquor Liability Act are to prevent intoxication-related traumatic injuries, deaths, and other damages and to estab-

lish a legal basis for obtaining compensation for persons suffering damages as a result of provision or service of alcoholic liquor to minors under circumstances described in the act.

Source: Laws 2007, LB573, § 2.

53-403 Terms, defined.

For purposes of the Minor Alcoholic Liquor Liability Act:

(1) Alcoholic liquor has the definition found in section 53-103.02;

(2) Intoxication means an impairment of a person's mental or physical faculties as a result of his or her use of alcoholic liquor so as to diminish the person's ability to think and act in the manner of a reasonably prudent person in full possession of his or her faculties using reasonable care under the same or similar circumstances;

(3) Licensee means a person holding a license issued under the Nebraska Liquor Control Act to sell alcoholic liquor at retail;

(4) Minor has the definition found in section 53-103.23;

(5) Retailer means a licensee, any agent or employee of the licensee acting within the scope and course of his or her employment, or any person who at the time of the events leading to an action under the Minor Alcoholic Liquor Liability Act was required to have a license issued under the Nebraska Liquor Control Act in order to sell alcoholic liquor at retail;

(6) Service of alcoholic liquor means any sale, gift, or other manner of conveying possession of alcoholic liquor; and

(7) Social host means a person who knowingly allows consumption of alcoholic liquor in his or her home or on property under his or her control by one or more minors. Social host does not include (a) a parent providing alcoholic liquor to only his or her minor child and to no other minors or (b) a religious corporation, organization, association, or society, and any authorized representative of such religious corporation, organization, association, or society, dispensing alcoholic liquor as part of any bona fide religious rite, ritual, or ceremony.

Source: Laws 2007, LB573, § 3; Laws 2010, LB861, § 79.
Effective date July 15, 2010.

Cross References

Nebraska Liquor Control Act, see section 53-101.

53-404 Cause of action authorized.

Any person who sustains injury or property damage, or the estate of any person killed, as a proximate result of the negligence of an intoxicated minor shall have, in addition to any other cause of action available in tort, a cause of action against:

(1) A social host who allowed the minor to consume alcoholic liquor in the social host's home or on property under his or her control;

(2) Any person who procured alcoholic liquor for the minor, other than with the permission and in the company of the minor's parent or guardian, when such person knew or should have known that the minor was a minor; or

(3) Any retailer who sold alcoholic liquor to the minor. The absolute defenses found in section 53-180.07 shall be available to a retailer in any cause of action brought under this section.

Source: Laws 2007, LB573, § 4.

53-405 Defense.

It shall be a complete defense in any action brought under the Minor Alcoholic Liquor Liability Act that the intoxication did not contribute to the negligent conduct.

Source: Laws 2007, LB573, § 5.

53-406 Limitation on cause of action.

No cause of action under the Minor Alcoholic Liquor Liability Act shall be available to the intoxicated person, his or her estate, or anyone whose claim is based upon injury to or death of the intoxicated person.

Source: Laws 2007, LB573, § 6.

53-407 Damages.

In an action under the Minor Alcoholic Liquor Liability Act, damages may be awarded for all actual damages, including damages for wrongful death, as in other tort actions.

Source: Laws 2007, LB573, § 7.

53-408 Statute of limitation.

Notwithstanding any other provision of law, any action under the Minor Alcoholic Liquor Liability Act shall be brought within four years after the occurrence causing the injury, property damage, or death.

Source: Laws 2007, LB573, § 8.

53-409 Effect of settlement and release; offset; joint and several liability; right of contribution.

(1) A plaintiff's settlement and release of one defendant in an action under the Minor Alcoholic Liquor Liability Act does not bar claims against any other defendant.

(2) The amount paid to a plaintiff in consideration for the settlement and release of a defendant in an action under the act shall be offset against all other subsequent judgments awarded to the plaintiff.

(3) The retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor who are defendants in an action brought under the act are jointly and severally liable in such action as provided in section 25-21,185.10 for those who act in concert to cause harm.

(4) In an action based on the act, the retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor shall have a right of contribution and not a right of subrogation from one another.

Source: Laws 2007, LB573, § 9.

CHAPTER 54
LIVESTOCK

Article.
1. Livestock Brand Act. 54-191 to 54-1,108.
3. Herd Laws. 54-311.
4. Estrays and Trespassing Animals. 54-401, 54-416.
5. Food Supply Animal Veterinary Incentive Program Act. 54-501 to 54-508.
6. Dogs and Cats.
   (a) Dogs. 54-601 to 54-616.
   (b) Dangerous Dogs. 54-617 to 54-624.
   (c) Commercial Dog and Cat Operator Inspection Act. 54-625 to 54-643.
   (d) Dog and Cat Purchase Protection Act. 54-644 to 54-650.
7. Protection of Health.
   (a) General Powers and Duties of Department of Agriculture. 54-701.03 to 54-705.
   (b) Bovine Tuberculosis Act. 54-706 to 54-722.
   (d) General Provisions. 54-744 to 54-753.06.
   (e) Anthrax. 54-754 to 54-781.
   (i) Exotic Animal Auctions and Swap Meets. 54-7,105 to 54-7,108.
8. Commercial Feed. 54-857.
9. Livestock Animal Welfare Act. 54-901 to 54-912.
23. Domesticated Cervine Animal Act. 54-2313.
24. Livestock Waste Management Act. 54-2416 to 54-2438.
26. Competitive Livestock Markets Act. 54-2601 to 54-2627.01.

ARTICLE 1
LIVESTOCK BRAND ACT

Section
54-191. Nebraska Brand Committee; created; members; terms; vacancy; bond or insurance; expenses; purpose.
54-192. Nebraska Brand Committee; employees; director; duties; brand recorder; grievance procedure.
54-194. Documents; signature and seal requirements.
54-199. Livestock brand; application; fee; requirements; issuance.
54-1,100. Recorded brand; transfer; lien or security interest; notice; effect; fee; effect.
54-1,108. Brand inspections; when; fees; reinspection; when.

54-191 Nebraska Brand Committee; created; members; terms; vacancy; bond or insurance; expenses; purpose.

The Nebraska Brand Committee is hereby created. Beginning August 28, 2007, the brand committee shall consist of five members appointed by the Governor. At least three appointed members shall be active cattlepersons and at least one appointed member shall be an active cattle feeder. The Secretary of State and the Director of Agriculture, or their designees, shall be nonvoting, ex officio members of the brand committee. The appointed members shall be owners of cattle within the brand inspection area, shall reside within the brand inspection area, shall be owners of Nebraska-recorded brands, and shall be persons whose principal business and occupation is the raising or feeding of cattle within the brand inspection area. The members of the brand committee shall elect a chairperson and vice-chairperson from among its appointed members during the first meeting held after September 1 each calendar year. A

member may be reelected to serve as chairperson or vice-chairperson. The Secretary of State shall remain a member of the brand committee in the capacity as chairperson of the brand committee until a chairperson is elected as provided in this section. The terms of the members shall be four-year, staggered terms. At the expiration of the term of an appointed member, the Governor shall appoint a successor. The members of the brand committee serving on August 28, 2007, shall be considered appointed to serve the remainder of their terms. The Governor shall complete any additional appointment of members as necessary to fulfill the membership of the brand committee as prescribed by Laws 2007, LB 422, on or before August 28, 2007. If there is a vacancy on the brand committee, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. The action of a majority of the members shall be deemed the action of the brand committee. No appointed member shall hold any elective or appointive state or federal office while serving as a member of the brand committee. Each member and each brand committee employee who collects or who is the custodian of any funds shall be bonded or insured as required under section 11-201. The appointed members of the brand committee shall be paid their actual and necessary traveling expenses in attending meetings of the brand committee or in performing any other duties that are prescribed in the Livestock Brand Act or section 54-415, as provided for in sections 81-1174 to 81-1177.

The purpose of the Nebraska Brand Committee is to protect Nebraska brand and livestock owners from the theft of livestock through established brand recording, brand inspection, and livestock theft investigation.

Source: Laws 1999, LB 778, § 22; Laws 2004, LB 884, § 26; Laws 2007, LB422, § 1.

54-192 Nebraska Brand Committee; employees; director; duties; brand recorder; grievance procedure.

(1) The Nebraska Brand Committee shall employ such employees as may be necessary to properly carry out the Livestock Brand Act and section 54-415, fix the salaries of such employees, and make such expenditures as are necessary to properly carry out such act and section. Employees of the brand committee shall receive mileage computed at the rate provided in section 81-1176. The brand committee shall select and designate a location or locations where the brand committee shall keep and maintain an office and where records of the brand inspection and investigation proceedings, transactions, communications, brand registrations, and official acts shall be kept.

(2) The brand committee shall employ a director as the executive officer of the brand committee, and the director shall also be the chief brand inspector, the chief investigator, and, for administrative purposes, the brand committee head. The director shall keep a record of all proceedings, transactions, communications, and official acts of the brand committee, shall be custodian of all records of the brand committee, and shall perform such other duties as may be required by the brand committee. The director shall call a meeting at the direction of the chairperson of the brand committee, or in his or her absence the vice-chairperson, or upon the written request of two or more members of the brand committee. The director shall have supervisory authority to direct and control all full-time and part-time employees of the brand committee. This

authority allows the director to hire employees as are needed on an interim basis subject to approval or confirmation by the brand committee for regular employment. The director may place employees on probation and may discharge an employee. In the absence of the director, by reason of illness, vacation, or official business away from the committee's headquarters, the assistant director shall have similar authority as outlined in this section for the director.

(3) The brand committee shall employ a brand recorder who shall be responsible for the processing of all applications for new livestock brands, the transfer of ownership of existing livestock brands, the maintenance of accurate and permanent records relating to livestock brands, and such other duties as may be required by the brand committee.

(4) If any employee of the brand committee after having been disciplined, placed on probation, or having had his or her services terminated desires to have a hearing before the entire brand committee, such a hearing shall be granted as soon as is practicable and convenient for all persons concerned. The request for such a hearing shall be made in writing by the employee alleging the grievance and shall be directed to the director. After hearing all testimony surrounding the grievance of such employee, the brand committee, at its discretion, may approve, rescind, nullify, or amend all actions as previously taken by the director.

Source: Laws 1999, LB 778, § 23; Laws 2007, LB422, § 2.

Cross References

Motor vehicles of deputized employees exempt from state marking requirements, see section 81-1021.

54-194 Documents; signature and seal requirements.

The director of the Nebraska Brand Committee or the chairperson of the brand committee shall have the authority to sign all certificates and other documents that may by law require certification by signature. Such documents shall include, but not be limited to, new brand certificates, brand transfer certificates, duplicate brand certificates, and brand renewal receipts. A facsimile of the brand committee seal and the signature of the brand recorder shall also be placed on all brand certificates.

Source: Laws 1999, LB 778, § 25; Laws 2007, LB422, § 3.

54-199 Livestock brand; application; fee; requirements; issuance.

(1) To record a brand, a person shall forward to the Nebraska Brand Committee a facsimile or description of the brand desired to be recorded, a written application, and a recording fee established by the brand committee. Such recording fee may vary according to the number of locations and methods of brand requested but shall not be more than one hundred dollars per application.

(2) For recording of visual brands, upon receipt of a facsimile of the brand, an application, and the required fee, the brand committee shall determine compliance with the following requirements:

(a) The brand shall be an identification mark that is applied to the hide of a live animal by hot iron branding or by either hot iron branding or freeze branding. The brand shall be on either side of the animal in any one of three locations, the shoulder, ribs, or hip;

(b) The brand is not recorded under the name of any other person and does not conflict with or closely resemble a prior recorded brand;

(c) The brand application specifies the left or right side of the animal and the location on that side of the animal where the brand is to be placed;

(d) The brand is not recorded as a trade name nor as the name of any profit or nonprofit corporation, unless such trade name or corporation is of record, in current good standing, with the Secretary of State; and

(e) The brand is, in the judgment of the brand committee, legible, adequate, and of such a nature that the brand when applied can be properly read and identified by employees of the brand committee.

(3) All visual brands shall be recorded as a hot iron brand only unless a co-recording as a freeze brand or other approved method of branding is requested by the applicant. The brand committee shall approve co-recording a brand as a freeze brand unless the brand would not be distinguishable from in-herd identification applied by freeze branding.

(4) The brand committee may, by rule and regulation, provide for the recording and use of brands by electronic device or other nonvisual method of livestock identification. Any such method of livestock identification shall be approved as a brand only if it functions as a means of identifying ownership of livestock so branded that is equal to, or superior to, visual methods of livestock branding. Before approving any nonvisual method of branding, the brand committee shall consider the degree to which such method may be susceptible to error, failure, or fraudulent alteration. Any rule or regulation shall be adopted only after public hearing conducted in compliance with the Administrative Procedure Act.

(5) If the facsimile, the description, or the application does not comply with the requirements of this section, the brand committee shall not record such brand as requested but shall return the recording fee to the forwarding person. The power of examination and rejection is vested in the brand committee, and if the brand committee determines that the application for a visual brand falls within the category set out in subdivision (2)(e) of this section, it shall decide whether or not a recorded brand shall be issued. The brand committee shall make such examination as promptly as possible. If the brand is recorded, the ownership vests from the date of filing of the application.

Source: Laws 1999, LB 778, § 30; Laws 2000, LB 213, § 5; Laws 2002, LB 589, § 3; Laws 2005, LB 441, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

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.

54-1,108 Brand inspections; when; fees; reinspection; when.

(1) All brand inspections provided for in the Livestock Brand Act or section 54-415 shall be from sunrise to sundown or during such other hours and under such conditions as the Nebraska Brand Committee determines.

(2) A fee, established by the Nebraska Brand Committee, of not more than seventy-five cents per head shall be charged for all cattle inspected in accordance with the Livestock Brand Act or section 54-415 or inspected within the brand inspection area by court order or at the request of any bank, credit agency, or lending institution with a legal or financial interest in such cattle. Such fee may vary to encourage inspection to be performed at times and locations that reduce the cost of performing the inspection but shall otherwise be uniform. The inspection fee for court-ordered inspections shall be paid from the proceeds of the sale of such cattle if ordered by the court or by either party as the court directs. For other inspections, the person requesting the inspection of such cattle is responsible for the inspection fee. If estray cattle are identified as a result of the inspection, such cattle shall be processed in the manner provided by section 54-415.

(3) Any person who has reason to believe that cattle were shipped erroneously due to an inspection error during a brand inspection may request a reinspection. The person making such request shall be responsible for the expenses incurred as a result of the reinspection unless the results of the reinspection substantiate the claim of inspection error, in which case the brand committee shall be responsible for the reinspection expenses.

Source: Laws 1999, LB 778, § 39; Laws 2002, LB 589, § 7; Laws 2005, LB 441, § 2.

ARTICLE 3

HERD LAWS

Section
54-311. Wells and pitfalls; prohibited acts.

54-311 Wells and pitfalls; prohibited acts.

It shall be unlawful for the owner or holder of any real estate in the State of Nebraska to leave uncovered any well or other pitfall into which any person or animal may fall or receive injury. Every pitfall shall be filled, adequately covered, or enclosed so as not to constitute a safety hazard. Every well not in use shall be decommissioned or properly placed in inactive status in accor-

dance with the Water Well Standards and Contractors' Practice Act so as not to constitute a safety hazard.

Source: Laws 1897, c. 6, § 1, p. 46; R.S.1913, § 105; C.S.1922, § 113; C.S.1929, § 54-310; R.S.1943, § 54-311; Laws 2003, LB 245, § 9; Laws 2007, LB463, § 1173.

Cross References

Abandoned water wells:
Duty of licensed water well contractor to plug, see section 46-1234.
Duty of owner to decommission and notify Department of Natural Resources, see section 46-602.
Penalty for failure to decommission, see section 46-1240.
Standards for decommissioning, see section 46-1227.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

ARTICLE 4

ESTRAYS AND TRESPASSING ANIMALS

Section
54-401. Estrays, trespassing animals; damages; liability.
54-416. Feral swine; applicability of sections; destruction; when.

54-401 Estrays, trespassing animals; damages; liability.

The owners of cattle, horses, mules, swine, sheep, and goats in this state are liable for all damages done by such stock upon the lands of another in this state as provided by section 54-402 if the damages to the lands are not the result of negligent or willful damage to the division fence by the person claiming damages to the land.

Source: Laws 1871, § 1, p. 120; R.S.1913, § 109; C.S.1922, § 117; C.S.1929, § 54-401; R.S.1943, § 54-401; Laws 1983, LB 149, § 1; Laws 1996, LB 1174, § 5; Laws 2008, LB925, § 1.

54-416 Feral swine; applicability of sections; destruction; when.

The duties and liabilities imposed by sections 54-401 to 54-415 do not apply in the case of estray or trespass of feral swine as defined in section 37-524.01. Feral swine may be destroyed as provided in section 37-524.01.

Source: Laws 2005, LB 20, § 2.

ARTICLE 5

FOOD SUPPLY ANIMAL VETERINARY INCENTIVE PROGRAM ACT

Section
54-501. Act, how cited.
54-502. Terms, defined.
54-503. Program; participation; incentives.
54-504. Applicant; eligibility; preference.
54-505. Distribution of program funds.
54-506. Release from program; when; recovery of payments.
54-507. Food Supply Animal Veterinary Incentive Fund; created; use; investment.
54-508. Rules and regulations.

54-501 Act, how cited.

Sections 54-501 to 54-508 shall be known and may be cited as the Food Supply Animal Veterinary Incentive Program Act.

Source: Laws 2008, LB1172, § 1.

54-502 Terms, defined.

For purposes of the Food Supply Animal Veterinary Incentive Program Act:

(1) Department means the Department of Agriculture;

(2) Food supply animal includes cattle, hogs, sheep, goats, and poultry;

(3) Food supply animal veterinarian means a veterinarian who is engaged in general or food supply animal practice as his or her primary focus of practice and who has a substantial portion of his or her practice devoted to food supply animal veterinary medicine;

(4) Program means the Food Supply Animal Veterinary Incentive Program; and

(5) Rural mixed animal veterinary practice means practice as a food supply animal veterinarian in a rural area and a substantial portion of the practice involves food supply animal veterinary practice.

Source: Laws 2008, LB1172, § 2.

54-503 Program; participation; incentives.

Each year the department shall select from a pool of applicants up to four veterinarians to participate in the program. The selected veterinarians are eligible to receive up to eighty thousand dollars under the program as an incentive to locate in rural Nebraska and practice food supply animal veterinary medicine.

Source: Laws 2008, LB1172, § 3.

54-504 Applicant; eligibility; preference.

(1) To be eligible for funds under the program, an applicant shall:

(a) Be a graduate of an approved veterinary medical school;

(b) Be licensed to practice veterinary medicine in this state;

(c) Enter into a contract with the department to provide full-time veterinary medicine services as a food supply animal veterinarian in a food supply animal veterinary practice or in a rural mixed animal veterinary practice for four years in one or more communities approved by the department; and

(d) Be accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services to provide services relating to food supply animals by the end of the first year of service.

(2) The department shall give preference for approving communities for purposes of subdivision (1)(c) of this section to communities located in areas designated by the department as shortage areas for food supply animal veterinary medical services. In designating such areas, the department may initially utilize shortage areas as designated by the American Veterinary Medical Association on July 18, 2008, and may revise designations as necessary and appropriate to achieve the purposes of the program.

Source: Laws 2008, LB1172, § 4.

54-505 Distribution of program funds.

(1) To the extent that funds are available, program funds shall be distributed as follows:

(a) After completing the first year of service under the contract, the veterinarian is eligible to receive up to fifteen thousand dollars;

(b) After completing the second year of service under the contract, the veterinarian is eligible to receive up to fifteen thousand dollars;

(c) After completing the third year of service under the contract, the veterinarian is eligible to receive up to twenty-five thousand dollars; and

(d) After completing the fourth year of service under the contract, the veterinarian is eligible to receive up to twenty-five thousand dollars.

(2) If the veterinarian does not complete an entire year of service or if sufficient funds are not available to provide the full dollar amount of incentive in a year, the amount distributed under this section for that year shall be prorated.

Source: Laws 2008, LB1172, § 5.

54-506 Release from program; when; recovery of payments.

(1) A veterinarian shall be released from the program contract without penalty if:

(a) The veterinarian has completed the service requirements of the contract;

(b) The veterinarian is unable to complete the service requirements of the contract because of a permanent physical disability;

(c) The veterinarian demonstrates extreme hardship or shows other good cause justifying the release; or

(d) The veterinarian dies.

(2)(a) A veterinarian shall be released from further performance of veterinary services under the program contract if he or she is unable to perform his or her contractual obligations to provide veterinary services due to the suspension or revocation of his or her federal accreditation or denial, refusal of renewal, limitation, suspension, revocation, or other disciplinary measure taken against his or her license to practice in Nebraska pursuant to section 71-1,163 until December 1, 2008, and section 38-3324 on and after December 1, 2008.

(b) If a veterinarian is released from his or her contract pursuant to subdivision (a) of this subsection, the department may recover a portion of or all of the payments made to such veterinarian under section 54-505. The department shall remit any such funds to the State Treasurer for credit to the Food Supply Animal Veterinary Incentive Fund. The department may use appropriate remedies available to enforce this subdivision.

(3) The State of Nebraska shall be released from any further obligation under the Food Supply Animal Veterinary Incentive Program Act or any contract entered into with a veterinarian under the act if the veterinarian is released from the program pursuant to this section.

Source: Laws 2008, LB1172, § 6.

54-507 Food Supply Animal Veterinary Incentive Fund; created; use; investment.

The Food Supply Animal Veterinary Incentive Fund is created. The fund may be used to carry out the purposes of the Food Supply Animal Veterinary Incentive Program Act. The State Treasurer shall credit to the fund any money appropriated to the fund by the Legislature and any money received as gifts or

grants or other private or public funds received under the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2008, LB1172, § 7.

Cross References

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

54-508 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Food Supply Animal Veterinary Incentive Program Act.

Source: Laws 2008, LB1172, § 8.

ARTICLE 6

DOGS AND CATS

(a) DOGS

(b) DANGEROUS DOGS

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

(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.

54-603 Dogs; license tax; amount; service animal; license; county, city, or village; collect fee; disposition.

(1) Any county, city, or village shall have authority by ordinance or resolution to impose a license tax, in an amount which shall be determined by the appropriate governing body, on the owner or harborer of any dog or dogs, to be paid under such regulations as shall be provided by such ordinance or resolutions.

(2) Every service animal shall be licensed as required by local ordinances or resolutions, but no license tax shall be charged. Upon the retirement or discontinuance of the animal as a service animal, the owner of the animal shall be liable for the payment of a license tax as prescribed by local ordinances or resolutions.

(3) Any county, city, or village that imposes a license tax on the owner or harborer of any cat or cats or any dog or dogs under this section shall, in addition to the license tax imposed by the licensing jurisdiction, collect from the licensee a fee of one dollar. The person designated by the licensing jurisdiction to collect and administer the license tax shall act as agent for the State of Nebraska in the collection of the fee. From each one-dollar fee collected, such person shall retain three cents and remit the balance to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund. If the person collecting the fee is the licensing jurisdiction, the three cents shall be credited to the licensing jurisdiction's general fund. If the person collecting the fee is a private contractor, the three cents shall be credited to an account of the private contractor. The remittance to the State Treasurer shall be made at least annually at the conclusion of the licensing jurisdiction's fiscal year, except that any licensing jurisdiction or private contractor that collects fifty dollars or less of such fees during the fiscal year may remit the fees when the cumulative amount of fees collected reaches fifty dollars.

Source: Laws 1877, § 3, p. 156; R.S.1913, § 174; C.S.1922, § 171; C.S. 1929, § 54-603; R.S.1943, § 54-603; Laws 1976, LB 515, § 2; Laws 1997, LB 814, § 7; Laws 2008, LB806, § 13; Laws 2010, LB910, § 3.
Effective date July 15, 2010.

Cross References

For other provisions authorizing municipalities to impose license tax on dogs, see sections 14-102, 15-220, 16-206, and 17-526.

54-607 Dogs; running at large; penalty.

The owner of any dog running at large for ten days without a collar as required in section 54-605 shall be fined an amount not to exceed twenty-five dollars.

Source: Laws 1877, § 7, p. 157; R.S.1913, § 178; C.S.1922, § 175; C.S. 1929, § 54-607; R.S.1943, § 54-607; Laws 2008, LB1055, § 8.

54-608 Dogs in counties having a population of 80,000 inhabitants or more; responsibilities of owners.

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, it shall be unlawful for any person, firm, partnership, limited liability company, or corporation to have any dog which is owned, kept, harbored, or allowed to be habitually in or upon premises occupied by him, her, or it or under his, her, or its control to be at large.

Source: Laws 1961, c. 268, § 2, p. 787; Laws 1988, LB 630, § 1; Laws 2008, LB1055, § 9.

54-609 Repealed. Laws 2008, LB 1055, § 24.

54-610 Dogs in counties having a population of 80,000 inhabitants or more; poundmaster; duties; filing complaint.

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, whenever complaints are made to the poundmaster or the person or corporation performing the duties of poundmaster that a dog is at large, it shall be the duty of such poundmaster, person, or corporation to investigate such complaint. If upon such investigation it appears that the complaint is founded upon facts, it shall be the duty of such poundmaster, person, or corporation to take such dog into custody and he, she, or it may file or cause to be filed a complaint in the county court against such person, firm, partnership, limited liability company, or corporation owning, keeping, or harboring such dog charging a violation of section 54-601 or 54-608.

Source: Laws 1961, c. 268, § 4, p. 787; Laws 1988, LB 801, § 1; Laws 1988, LB 630, § 3; Laws 1993, LB 121, § 338; Laws 2008, LB1055, § 10.

54-611 Dogs in counties having a population of 80,000 inhabitants or more; convictions; disposition of offending dog; costs.

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties, if upon final hearing the defendant is adjudged guilty of any violation of section 54-601 or 54-608, the court may, in addition to the penalty provided in section 54-613, order such disposition of the offending dog as may seem reasonable and proper. Disposition includes sterilization, seizure, permanent assignment of the dog to a court-approved animal shelter or animal rescue as such terms are defined in section 28-1018, or destruction of the dog in an expeditious and humane manner. Reasonable costs for such disposition are the responsibility of the defendant.

Source: Laws 1961, c. 268, § 5, p. 787; Laws 1988, LB 801, § 2; Laws 1988, LB 630, § 4; Laws 2008, LB1055, § 11; Laws 2010, LB910, § 4.
Effective date July 15, 2010.

54-613 Violations; penalties.

Any person in violation of section 54-601 or 54-608 shall be deemed guilty of a Class IV misdemeanor.

Source: Laws 1961, c. 268, § 7, p. 788; Laws 1977, LB 39, § 20; Laws 1988, LB 801, § 3; Laws 1988, LB 630, § 5; Laws 2008, LB1055, § 12.

54-614 County; license tax; regulate dogs running at large; appeal process.

(1) A county may collect a license tax in an amount which shall be determined by the appropriate governing body from the owners and harborers of dogs and may enforce such tax by appropriate penalties. A county may impound any dog if the owner or harborer shall refuse or neglect to pay such license tax. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals.

(2) A county may regulate or prohibit the running at large of dogs, adopt regulations to guard against injuries or annoyances therefrom, and authorize the destruction, adoption, or other disposition of such dogs when running at large contrary to the provisions of this subsection or any regulations adopted in accordance with this subsection. A county adopting regulations in accordance with this subsection shall provide for an appeal process with respect to such regulations.

Source: Laws 1963, c. 104, § 1, p. 429; Laws 1986, LB 1063, § 1; Laws 1997, LB 814, § 8; Laws 2008, LB806, § 14; Laws 2008, LB1055, § 13.

54-615 County; impound dog; cost and penalties.

A county may impound any dog deemed to be running at large. The owner of such dog shall pay the reasonable cost and penalties provided for the violation of such prohibition, including the expense of impounding and keeping the dog.

Source: Laws 1963, c. 104, § 2, p. 429; Laws 2008, LB1055, § 14.

54-616 County; pounds; erection; keepers; compensation; rules and regulations.

A county may provide for the erection of any pounds needed within the county, appoint and compensate keepers thereof, and establish and enforce rules governing such pounds.

Source: Laws 1963, c. 104, § 3, p. 430; Laws 2008, LB1055, § 15.

(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.

54-618 Dangerous dogs; actions required; costs; limitations on transport; permanent relocation; procedure.

(1) A dangerous dog that has been declared as such shall be spayed or neutered and implanted with a microchip identification number by a licensed veterinarian within thirty days after such declaration. The cost of both procedures is the responsibility of the owner of the dangerous dog. Written proof of both procedures and the microchip identification number shall be provided to the animal control authority after the procedures are completed.

(2) No owner of a dangerous dog shall permit the dog to go beyond the property of the owner unless the dog is restrained securely by a chain or leash.

(3) Except as provided in subsection (4) of this section or for a reasonable veterinary purpose, no owner of a dangerous dog shall transport such dog or permit such dog to be transported to another county, city, or village in this state.

(4) An owner of a dangerous dog may transport such dog or permit such dog to be transported to another county, city, or village in this state for the purpose of permanent relocation of the owner if the owner has obtained written permission prior to such relocation from the animal control authority of the county, city, or village in which the owner resides and from the county, city, or village in which the owner will reside. Each animal control authority may grant such permission based upon a reasonable evaluation of both the owner and the dog, including if the owner has complied with the laws of this state and of the county, city, or village in which he or she resides with regard to dangerous dogs after the dog was declared dangerous. An animal control authority shall not grant permission under this subsection if the county, city, or village has an ordinance or resolution prohibiting the relocation of dangerous dogs. After the permanent relocation, the animal control authority of the county, city, or village in which the owner resides shall monitor the owner and such dog for a period of at least thirty days but not to exceed ninety days to ensure the owner's compliance with the laws of this state and of such county, city, or village with regard to dangerous dogs. Nothing in this subsection shall permit the rescindment of the declaration of dangerous dog.

Source: Laws 1989, LB 208, § 2; Laws 2008, LB1055, § 17.

54-619 Dangerous dogs; confinement required; warning signs.

(1) No person, firm, partnership, limited liability company, or corporation shall own, keep, or harbor or allow to be in or on any premises occupied by him, her, or it or under his, her, or its charge or control any dangerous dog without such dog being confined so as to protect the public from injury.

(2) While unattended on the owner's property, a dangerous dog shall be securely confined, in a humane manner, indoors or in a securely enclosed and locked pen or structure suitably designed to prevent the entry of young children and to prevent the dog from escaping. The pen or structure shall have secure sides and a secure top. If the pen or structure has no bottom secured to the sides, the sides shall be embedded into the ground at a depth of at least one foot. The pen or structure shall also protect the dog from the elements. The pen or structure shall be at least ten feet from any property line of the owner. The owner of a dangerous dog shall post warning signs on the property where the dog is kept that are clearly visible from all areas of public access and that inform persons that a dangerous dog is on the property. Each warning sign shall be no less than ten inches by twelve inches and shall contain the words

warning and dangerous animal in high-contrast lettering at least three inches high on a black background.

Source: Laws 1989, LB 208, § 3; Laws 2008, LB1055, § 18.

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.

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.

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.

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.

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.

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.

(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.

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 rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as the primary means of housing dogs or cats;

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

(4) 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, animal rescues, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

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

(6) Commercial breeder means a person engaged in the business of breeding dogs or cats:

(a) 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) 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) 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) Who knowingly sells, exchanges, or leases dogs or cats for later retail sale or brokered trading;

(7) 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;

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

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

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

(11) Foster home means any person who provides temporary housing for twenty or fewer dogs or cats that are six months of age or older in any twelve-month period and is affiliated with a person operating as an animal rescue that uses foster homes as its primary housing of dogs or cats. To be considered a foster home, a person shall not participate in the acquisition of the dogs or cats for which temporary care is provided. Any foster home which houses more than twenty dogs or cats that are six months of age or older in any twelve-month period or who participates in the acquisition of dogs or cats shall be licensed as an animal rescue;

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

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

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

(15) 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;

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

(17) 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;

(18) 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;

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

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

(21) 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; Laws 2010, LB910, § 5.
Effective date July 15, 2010.

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, an animal shelter, or, beginning October 1, 2010, an animal rescue unless the person obtains the appropriate license as a commercial breeder, a dealer, a boarding kennel, an animal control facility, an animal shelter, or, beginning October 1, 2010, an animal rescue. If a licensee is operating as an animal shelter as of July 15, 2010, he or she may apply for licensure as an animal rescue before October 1, 2010, and shall not be required to pay any licensing fee until October 1, 2010. 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;

(iii) Fifty-one to one hundred dogs or cats, two hundred fifty dollars;

(iv) One hundred one to one hundred fifty dogs or cats, three hundred dollars;

(v) One hundred fifty-one to two hundred dogs or cats, three hundred fifty dollars;

(vi) Two hundred one to two hundred fifty dogs or cats, four hundred dollars;

(vii) Two hundred fifty-one to three hundred dogs or cats, four hundred fifty dollars;

(viii) Three hundred one to three hundred fifty dogs or cats, five hundred dollars;

(ix) Three hundred fifty-one to four hundred dogs or cats, five hundred fifty dollars;

(x) Four hundred one to four hundred fifty dogs or cats, six hundred dollars;

(xi) Four hundred fifty-one to five hundred dogs or cats, six hundred fifty dollars; and

(xii) More than five hundred dogs or cats, two thousand 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 annual license fee for an animal rescue shall be one hundred fifty dollars.

(e) 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 that may be charged shall not result in a fee for any license category that exceeds the license fee set forth in this subsection by more than one hundred 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 on or before April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility, animal rescue, or animal shelter shall be renewed by filing with the department on or before 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 a late renewal fee equal to twenty percent of the annual license fee due and payable each month, not to exceed one hundred percent of such fee, in addition to the license fee. The purpose of the late renewal fee is to pay for the administrative costs associated with the collection of fees under this section. The assessment of the late renewal fee shall not prohibit the director from taking any other action as provided in the act.

(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, animal rescue, or animal shelter for the full term of the contract with the state or its political subdivision.

(7) Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund.

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; Laws 2010, LB910, § 6.
Effective date July 15, 2010.

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 rescue, 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; Laws 2010, LB910, § 7.
Effective date July 15, 2010.

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.

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.

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.

54-630 Application; denial; appeal.

Before the department approves an application for an initial license, an inspector of the department shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Commercial Dog and Cat Operator Inspection Act. An applicant who qualifies shall be issued a license. An applicant who does not receive a license shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license should a license be issued. All such hearings shall be in accordance with the Administrative Procedure Act.

Source: Laws 2000, LB 825, § 6; Laws 2007, LB12, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

54-631 Licensee; duties; disciplinary actions.

(1) A licensee under the Commercial Dog and Cat Operator Inspection Act shall comply with the act, the rules and regulations, and any order of the director issued pursuant thereto. The licensee shall not interfere with the department in the performance of its duties.

(2) A licensee may be put on probation requiring such licensee to comply with the conditions set out in an order of probation issued by the director, may be ordered to cease and desist due to a failure to comply, or may be ordered to pay an administrative fine pursuant to section 54-633 after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why an order should not be issued; and

(c) The director finds that issuing an order is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(3) A license may be suspended after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(4) A license may be immediately suspended and the director may order the operation of the licensee closed prior to hearing when:

(a) The director determines that there is a significant threat to the health or safety of the dogs or cats harbored or owned by the licensee; and

(b) The licensee receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the licensee may request in writing a date for a hearing, and the director shall consider the interests of the licensee when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a licensee does not request a hearing date within the fifteen-day period, the

director shall establish a hearing date and notify the licensee of the date and time of such hearing.

(5) A license may be revoked after:

(a) The director determines the licensee has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(6) The operation of any licensee which has been suspended shall close and remain closed until the license is reinstated. Any operation for which the license has been revoked shall close and remain closed until a new license is issued.

(7) The director may terminate proceedings undertaken pursuant to this section at any time if the reasons for such proceedings no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a licensee may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings undertaken pursuant to this section shall not preclude the department from seeking other civil or criminal actions.

Source: Laws 2000, LB 825, § 7; Laws 2007, LB12, § 6.

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.

Cross References

Administrative Procedure Act, see section 84-920.

54-633 Enforcement powers; administrative fine.

(1) In order to ensure compliance with the Commercial Dog and Cat Operator Inspection Act, the department may apply for a restraining order, temporary or permanent injunction, or mandatory injunction against any person violating or threatening to violate the act, the rules and regulations, or any order of the director issued pursuant thereto. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

The county attorney of the county in which such violations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under this section to be instituted and pursued without delay.

(2) If alleged violations of the Commercial Dog and Cat Operator Inspection Act, the rules and regulations, or an order of the director or an offense against animals observed by an inspector in the course of performing an inspection under the act poses a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or licensee, the department may direct an inspector to impound the dogs or cats pursuant to sections 28-1011 and 28-1012 or may request any other law enforcement officer as defined in section 28-1008 to impound the dogs or cats pursuant to sections 28-1011 and 28-1012. The department shall cooperate and coordinate with law enforcement agencies, political subdivisions, animal shelters, humane societies, and other appropriate entities, public or private, to provide for the care, shelter, and disposition of animals impounded by the department pursuant to this section.

(3) The department may impose an administrative fine of not more than five thousand dollars for any violation of the act or the rules and regulations adopted and promulgated under the act. Each violation of the act or such rules and regulations shall constitute a separate offense for purposes of this subsection.

Source: Laws 2000, LB 825, § 9; Laws 2006, LB 856, § 15; Laws 2007, LB12, § 8.

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.

54-637 Information on spaying and neutering; requirements.

(1) Every dealer, commercial breeder, animal shelter, animal rescue, animal control facility, or pet shop or any other retailer, who transfers ownership of a dog or cat to an ultimate consumer, shall deliver to the ultimate consumer of each dog or cat at the time of sale, written material, in a form determined by such seller, containing information on the benefits of spaying and neutering. The written material shall include recommendations on establishing a relationship with a veterinarian, information on early-age spaying and neutering, the health benefits associated with spaying and neutering pets, the importance of minimizing the risk of homeless or unwanted animals, and the need to comply with applicable license laws.

(2) The delivering of any model materials prepared by the Pet Industry Joint Advisory Council or the Nebraska Humane Society shall satisfy the requirements of subsection (1) of this section.

Source: Laws 2003, LB 274, § 4; Laws 2010, LB910, § 8. Effective date July 15, 2010.

54-638 Provision for spaying or neutering; when.

Provision shall be made for spaying or neutering all dogs and cats released for adoption or purchase from any public or private animal shelter, animal rescue, or animal control facility operated by a humane society, a county, a city, or another political subdivision. Such provision may be made by:

(1) Causing the dog or cat to be spayed or neutered by a licensed veterinarian before releasing the dog or cat for adoption or purchase; or

(2) Entering into a written agreement with the adopter or purchaser of the dog or cat, guaranteeing that spaying or neutering will be performed by a licensed veterinarian in compliance with an agreement which shall contain the following information:

(a) The date of the agreement;

(b) The name, address, and signature of the releasing entity and the adopter or purchaser;

(c) A description of the dog or cat to be adopted or purchased;

(d) A statement, in conspicuous bold print, that spaying or neutering of the dog or cat is required pursuant to this section; and

(e) The date by which the spaying or neutering will be completed, which date shall be (i) in the case of an adult dog or cat, the thirtieth day after the date of adoption or purchase or (ii) in the case of a pup or kitten, either (A) the thirtieth day after a specified date estimated to be the date the pup or kitten will reach six months of age or (B) if the releasing entity has a written policy recommending spaying or neutering of certain pups or kittens at an earlier date, the thirtieth day after such date.

Source: Laws 2003, LB 274, § 5; Laws 2010, LB910, § 9.
Effective date July 15, 2010.

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.

54-642 Department; submit report of costs and revenue.

On or before November 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all costs incurred in the previous fiscal year in carrying out the Commercial Dog and Cat Operator Inspection Act. The report shall identify costs incurred by the department to administer the act and shall detail costs incurred by primary activity. The department shall also provide a breakdown by category of all revenue credited to the Commercial Dog and Cat Operator Inspection Program Cash Fund in the previous fiscal year. The Agriculture Committee and Appropriations Committee of the Legislature shall review the report to ascertain program activity levels and to determine funding requirements of the program.

Source: Laws 2006, LB 856, § 16.

54-643 Administrative fines; disposition; lien; collection.

(1) All money collected by the department pursuant to section 54-633 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any administrative fine levied pursuant to section 54-633 which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property.

Source: Laws 2007, LB12, § 9.

(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.

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, animal rescue, or animal shelter as defined in section 54-626 or any animal adoption activity that an animal control facility, animal rescue, 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; Laws 2010, LB910, § 10.
Effective date July 15, 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.

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.

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.

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.

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.

ARTICLE 7

PROTECTION OF HEALTH

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section
54-701.03. Terms, defined.
54-702. Voluntary national uniform system of animal identification; department; powers.
54-702.01. Uniform system of animal identification; information; restrictions on disclosure; violations; penalty.
54-703. Prevention of diseases; enforcement of sections; inspections; rules and regulations.
54-704. Prevention of diseases; federal agents; powers.
54-705. Prevention of diseases; orders of department; enforcement.

(b) BOVINE TUBERCULOSIS ACT

54-706. Repealed. Laws 2007, LB 110, § 20.
54-706.01. Act, how cited.
54-706.02. Purpose of act.
54-706.03. Definitions.
54-706.04. Federal regulations adopted; inconsistency; how treated; filing required.
54-706.05. Act; administration and enforcement; department; powers and duties; prohibited acts; penalty.
54-706.06. Animal exhibiting signs of bovine tuberculosis; report required; submit animal for testing.
54-706.07. Department; rules and regulations; tests; reports.
54-706.08. Quarantine; epidemiologic investigation; prohibited acts; penalty.
54-706.09. Cleaning and disinfection of affected premises.
54-706.10. Examination and testing of affected herd; prohibited acts; penalty.
54-706.11. Department; assessment and collection of payments for services.
54-706.12. Bovine Tuberculosis Cash Fund; created; use; investment.
54-706.13. Implementation of act; funding; limitations on payments.
54-706.14. Tuberculin; injection or application; limitations.
54-706.15. Department; enforcement powers; Attorney General or county attorney; powers and duties.
54-706.16. Violations; department powers; hearing; order or other action; appeal.
54-706.17. Violations of act; penalty.
54-707. Repealed. Laws 2007, LB 110, § 20.
54-708. Repealed. Laws 2007, LB 110, § 20.
54-709. Repealed. Laws 2007, LB 110, § 20.
54-710. Repealed. Laws 2007, LB 110, § 20.
54-711. Repealed. Laws 2007, LB 110, § 20.
54-712. Repealed. Laws 2007, LB 110, § 20.
54-713. Repealed. Laws 2007, LB 110, § 20.

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

54-701.03 Terms, defined.

For purposes of sections 54-701 to 54-753.05, 54-797 to 54-7,103, and 54-7,105 to 54-7,108:

(1) Accredited veterinarian means a veterinarian approved by the deputy administrator of the United States Department of Agriculture in accordance with 9 C.F.R. part 161, as such regulation existed on January 1, 2006;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) Bureau of Animal Industry means the Bureau of Animal Industry of the Department of Agriculture of the State of Nebraska and includes the State Veterinarian, deputy state veterinarian, veterinary field officers, livestock inspectors, investigators, and other employees of the bureau;

(4) Dangerous disease means a disease transmissible to and among livestock which has the potential for rapid spread, serious economic impact or serious threat to livestock health, and is of major importance in the trade of livestock and livestock products;

(5) Department means the Department of Agriculture of the State of Nebraska;

(6) Director means the Director of Agriculture of the State of Nebraska or his or her designee;

(7) Domesticated cervine animal means any elk, deer, or other member of the family cervidae legally obtained from a facility which has a license, permit, or registration authorizing domesticated cervine animals which has been issued by the state where the facility is located and such animal is raised in a confined area;

(8) Exotic animal means any animal which is not commonly sold through licensed livestock auction markets pursuant to the Livestock Auction Market Act. Such animals shall include, but not be limited to, miniature cattle, miniature horses, miniature donkeys, Barbary sheep, Dall's sheep, alpacas, llamas, pot-bellied pigs, and small mammals, with the exception of cats of the Felis domesticus species and dogs of the Canis familiaris species. The term also includes birds and poultry. The term does not include beef and dairy cattle, calves, swine, bison, sheep sold for wool or food, goats sold for dairy, food, or fiber, and domesticated cervine animals;

(9) Exotic animal auction or swap meet means any event or location as defined in rules and regulations of the department, other than a livestock auction market as defined in section 54-1158, where (a) an exotic animal is purchased, sold, traded, bartered, given away, or otherwise transferred, (b) an offer to purchase an exotic animal is made, or (c) an exotic animal is offered to be sold, traded, bartered, given away, or otherwise transferred;

(10) Exotic animal auction or swap meet organizer means a person in charge, as identified by rule and regulation of the department, of organizing an exotic animal auction or swap meet event, and may include any person who: (a) Arranges events for third parties to have private sales or trades of exotic animals; (b) organizes or coordinates exotic animal auctions or swap meets; (c)

leases out areas for exotic animal auctions or swap meets; or (d) provides or coordinates other similar arrangements involving exotic animals;

(11) Exposed means being part of a herd which contains or has contained an animal infected with a disease agent which affects livestock or having had a reasonable opportunity to come in contact with an infective disease agent which affects livestock;

(12) Herd means any group of livestock maintained on common ground for any purpose or two or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to health status;

(13) Livestock means cattle, swine, sheep, horses, mules, goats, domesticated cervine animals, ratite birds, and poultry;

(14) Poultry means domesticated birds that serve as a source of eggs or meat and includes, but is not limited to, chickens, turkeys, ducks, and geese;

(15) Program disease means a livestock disease for which specific legislation exists for disease control or eradication;

(16) Quarantine means restriction of (a) movement imposed by the department on an animal, group of animals, or herd of animals because of infection with, or exposure to, a disease agent which affects livestock and (b) use of equipment, facilities, land, buildings, and enclosures which are used or have been used by animals infected with, or suspected of being infected with, a disease agent which affects livestock;

(17) Ratite bird means any ostrich, emu, rhea, kiwi, or cassowary;

(18) Sale means a sale, lease, loan, trade, barter, or gift;

(19) Surveillance means the collection and testing of livestock blood, tissue, hair, body fluids, discharges, excrements, or other samples done in a herd or randomly selected livestock to determine the presence or incidence of disease in the state or area of the state; and

(20) Veterinarian means an individual who is a graduate of an accredited college of veterinary medicine.

Source: Laws 1993, LB 267, § 2; Laws 1995, LB 718, § 6; Laws 1999, LB 404, § 25; Laws 1999, LB 870, § 2; Laws 2001, LB 438, § 3; Laws 2006, LB 856, § 17.

Cross References

Livestock Auction Market Act, see section 54-1156.

54-702 Voluntary national uniform system of animal identification; department; powers.

The Department of Agriculture may, within the framework and consistent with standards of the National Animal Identification System, cooperate and coordinate with the Animal and Plant Health Inspection Service of the United States Department of Agriculture and other local, state, and national agencies and organizations, public or private, to define premises where livestock are located, to develop a voluntary premises registration system for Nebraska, and to implement other state components of a voluntary national uniform system of animal identification. If the department implements such a system, the department shall also develop and facilitate a process of withdrawal of registration that would remove premises identifiers from its data base. Written confirmation

shall be sent upon withdrawal of registration from the department's data base. The department shall cooperate with the United States Department of Agriculture in the process to withdraw registrations.

Source: Laws 2006, LB 856, § 28; Laws 2008, LB632, § 1.

54-702.01 Uniform system of animal identification; information; restrictions on disclosure; violations; penalty.

(1) Any information that a person provides to the Department of Agriculture for purposes of premises registration or otherwise for voluntary participation in or compliance with a uniform system of animal identification shall not be subject to public inspection pursuant to sections 84-712 to 84-712.09. The department and its employees or agents shall not disclose such information to any other person or agency except when such disclosure:

(a) Is authorized by the person who provides the information; or

(b) Is necessary for purposes of disease surveillance or to carry out epidemiological investigations related to incidences of animal disease.

(2) The department may disclose information as authorized by this section subject to any confidentiality requirements that the department determines are appropriate under the circumstances.

(3) Any person who violates this section shall be subject to prosecution and penalty for official misconduct pursuant to section 28-924.

(4) Nothing in this section shall be construed to prohibit the department from discussing, reporting, or otherwise disclosing the progress or results of disease surveillance activities or epidemiological investigations related to incidences of animal disease.

Source: Laws 2006, LB 856, § 29.

54-703 Prevention of diseases; enforcement of sections; inspections; rules and regulations.

(1) The Department of Agriculture and all inspectors and persons appointed and authorized to assist in the work of the department shall enforce sections 54-701 to 54-753.05, 54-797 to 54-7,103, and 54-7,105 to 54-7,108 as designated.

(2) The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any animal thereon, including any premises where the carcass or carcasses of dead livestock may be found or where a facility for the disposal or storage of dead livestock is located, for the purpose of making any and all inspections, examinations, tests, and treatments of such animal, to inspect livestock carcass disposal practices, and to declare, carry out, and enforce any and all quarantines.

(3) The department, in consultation with the Department of Environmental Quality and the Department of Health and Human Services, may adopt and promulgate rules and regulations reflecting best management practices for the burial of carcasses of dead livestock.

(4) The Department of Agriculture shall further adopt and promulgate such rules and regulations as are necessary to promptly and efficiently enforce and effectuate the general purpose and provisions of such sections.

Source: Laws 1927, c. 12, art. I, § 3, p. 81; C.S.1929, § 54-903; R.S.1943, § 54-703; Laws 1993, LB 267, § 4; Laws 2001, LB 438, § 4; Laws 2006, LB 856, § 18; Laws 2007, LB296, § 224.

54-704 Prevention of diseases; federal agents; powers.

Any veterinary inspector or agent of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, who has been officially assigned by the United States Department of Agriculture for service in Nebraska may be officially authorized by the Department of Agriculture to perform and exercise such powers and duties as may be prescribed by the department and when so authorized shall have and exercise all rights and powers vested by sections 54-701 to 54-753.05, 54-797 to 54-7,103, and 54-7,105 to 54-7,108 in agents and representatives in the regular employ of the department.

Source: Laws 1927, c. 12, art. I, § 4, p. 81; C.S.1929, § 54-904; R.S.1943, § 54-704; Laws 1993, LB 267, § 5; Laws 2001, LB 438, § 5; Laws 2006, LB 856, § 19.

54-705 Prevention of diseases; orders of department; enforcement.

The Department of Agriculture or any officer, agent, employee, or appointee thereof may call upon any sheriff, deputy sheriff, or other police officer to execute the orders of the department, and the officer shall obey the orders of the department. The officers performing such duties shall receive compensation therefor as is prescribed by law for like services and shall be paid therefor by the county. Any officer may arrest and take before the county judge of the county any person found violating any of the provisions of sections 54-701 to 54-753.05 and 54-7,105 to 54-7,108, and such officer shall immediately notify the county attorney of such arrest. The county attorney shall prosecute the person so offending according to law.

Source: Laws 1927, c. 12, art. I, § 5, p. 82; C.S.1929, § 54-905; R.S.1943, § 54-705; Laws 1972, LB 1032, § 261; Laws 1988, LB 1030, § 45; Laws 1993, LB 267, § 6; Laws 2001, LB 438, § 6; Laws 2006, LB 856, § 20.

(b) BOVINE TUBERCULOSIS ACT

54-706 Repealed. Laws 2007, LB 110, § 20.

54-706.01 Act, how cited.

Sections 54-706.01 to 54-706.17 and the provisions of the Code of Federal Regulations and Bovine Tuberculosis Eradication Uniform Methods and Rules adopted by reference in section 54-706.04 shall be known and may be cited as the Bovine Tuberculosis Act.

Source: Laws 2007, LB110, § 1.

54-706.02 Purpose of act.

The purpose of the Bovine Tuberculosis Act is to maintain Nebraska's status as a tuberculosis accredited free state through the use of monitoring and surveillance to maintain tuberculosis-free conditions within the state.

Source: Laws 2007, LB110, § 2.

54-706.03 Definitions.

For purposes of the Bovine Tuberculosis Act, the definitions found in the federal regulations and rules adopted by reference in section 54-706.04 shall be used and:

(1) Accredited veterinarian means a veterinarian approved by the Administrator of APHIS to perform functions required by cooperative state-federal animal disease control and eradication programs;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) APHIS means the Animal and Plant Health Inspection Service of the United States Department of Agriculture;

(4) Bovine means cattle and bison;

(5) Department means the Department of Agriculture or its authorized designee;

(6) Designated accredited veterinarian means an accredited veterinarian trained and approved to conduct specific bovine tuberculosis tests such as the bovine interferon gamma assay, other bovine tuberculosis program activities, or both; and

(7) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the Director of Agriculture.

Source: Laws 2007, LB110, § 3.

54-706.04 Federal regulations adopted; inconsistency; how treated; filing required.

(1) The Legislature hereby adopts by reference 9 C.F.R. part 77, except requirements relating to captive cervids, and the Bovine Tuberculosis Eradication Uniform Methods and Rules published by APHIS in effect on February 15, 2007, as part of the Bovine Tuberculosis Act. If there is an inconsistency between such federal regulations and the Bovine Tuberculosis Act or between such Uniform Methods and Rules and the Bovine Tuberculosis Act, the requirements of the Bovine Tuberculosis Act shall control. If there is an inconsistency between such federal regulations and the Uniform Methods and Rules, the requirements of the federal regulations shall control, except in the definition of livestock where the definition in the Uniform Methods and Rules shall control.

(2) Certified copies of the portion of the federal regulations and the rules adopted by reference pursuant to this section shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

Source: Laws 2007, LB110, § 4.

54-706.05 Act; administration and enforcement; department; powers and duties; prohibited acts; penalty.

(1) The Bovine Tuberculosis Act shall be administered and enforced by the Bureau of Animal Industry of the department.

(2) In administering the act, the department may cooperate and contract with persons or appropriate local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to the act. The department may also cooperate with the APHIS in (a) the control and eradication of bovine tuberculosis in this state and (b) recommending where and how any available federal funds and state personnel and materials are allocated for the purpose of bovine tuberculosis control and eradication.

(3) In administering the act, the department shall have access to all livestock dealer and livestock auction market records to facilitate the traceback of affected, exposed, suspect, or reactor animals to the herd of origin or other point of original infection. Such records shall be maintained for a minimum of five years and shall be made available to the State Veterinarian upon request during normal business hours.

(4) For purposes of making inspections, conducting tests, or both, agents and employees of the department shall have access to any premises where animals may be located. Any person who interferes or obstructs any agent or employee of the department in such work or attempts to obstruct or prevent by force the carrying on of such inspection, testing, or both is guilty of a Class II misdemeanor.

Source: Laws 2007, LB110, § 5.

54-706.06 Animal exhibiting signs of bovine tuberculosis; report required; submit animal for testing.

Any person who discovers, suspects, or has reason to believe that any 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 bovine tuberculosis shall immediately report such fact, belief, or suspicion to the State Veterinarian.

An owner or custodian of an animal exhibiting signs consistent with bovine tuberculosis shall submit such designated animal to be tested when ordered to do so by the State Veterinarian.

Source: Laws 2007, LB110, § 6.

54-706.07 Department; rules and regulations; tests; reports.

(1) The department by rule and regulation may prescribe the manner, method, and system of testing livestock or any other animal suspected of being affected with or exposed to M. bovis under a cooperative program.

(2) The department may also adopt and promulgate any other rules and regulations necessary to carry out the Bovine Tuberculosis Act.

(3) Accredited veterinarians are authorized to apply only the caudal fold tuberculin test. Tuberculin tests shall be conducted by a veterinarian employed by the department or APHIS or by a designated accredited veterinarian. All tests are official tests and shall be reported to the State Veterinarian on an official bovine tuberculosis test chart. Such report shall include the official identification, age, sex, and breed of each animal and a record of all responses and test interpretations.

Source: Laws 2007, LB110, § 7.

54-706.08 Quarantine; epidemiologic investigation; prohibited acts; penalty.

(1) The State Veterinarian may immediately quarantine any animal and the premises on which such animal is located if bovine tuberculosis is suspected or has been diagnosed in an animal on such premises.

(2) Disclosure of bovine tuberculosis in any animal shall be followed by an epidemiologic investigation in accordance with the Bovine Tuberculosis Act.

(3) No person shall prevent the testing of or remove any animal which has been placed in quarantine pursuant to this section from the place of quarantine until such quarantine is released by the State Veterinarian, except authorized movement for slaughter or other movement as authorized by the State Veterinarian. Any person who violates this subsection is guilty of a Class II misdemeanor. Each animal moved, purchased, sold, traded, bartered, granted, loaned, or otherwise transferred in violation of this subsection is a separate violation.

Source: Laws 2007, LB110, § 8.

54-706.09 Cleaning and disinfection of affected premises.

(1) All premises that are determined by the State Veterinarian to constitute a health hazard to animals because of bovine tuberculosis shall be properly cleaned and disinfected in accordance with the Bovine Tuberculosis Act.

(2) The State Veterinarian may require and supervise the prescribed cleaning and disinfection of affected premises.

Source: Laws 2007, LB110, § 9.

54-706.10 Examination and testing of affected herd; prohibited acts; penalty.

The owner or custodian of an affected herd shall assemble and submit such herd for bovine tuberculosis examination and testing and shall provide reasonable assistance in confining the animals and providing facilities for proper administration of the testing. Any person who interferes or obstructs anyone in such work or attempts to obstruct or prevent by force the carrying on of such examination and testing is guilty of a Class II misdemeanor.

Source: Laws 2007, LB110, § 10.

54-706.11 Department; assessment and collection of payments for services.

The department may assess and collect payment for services provided and expenses incurred pursuant to its responsibilities under the Bovine Tuberculosis Act and the rules and regulations adopted and promulgated pursuant thereto. All payments assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Bovine Tuberculosis Cash Fund.

Source: Laws 2007, LB110, § 11.

54-706.12 Bovine Tuberculosis Cash Fund; created; use; investment.

The Bovine Tuberculosis 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 Bovine Tuberculosis Act. Any money in the fund available for investment shall be invested by the state investment officer

pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB110, § 12.

Cross References

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

54-706.13 Implementation of act; funding; limitations on payments.

(1) 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 Bovine Tuberculosis Act if funds for any activities or any portion have been appropriated. The department may develop statewide priorities for the expenditure of state funds available for bovine tuberculosis control and eradication program activities.

(2) Part of such state funds may be used by the department to pay a portion of the cost of testing done by or for accredited veterinarians if such work is approved by the department.

(3) In administering the act and program activities pursuant to the act, the department shall not pay for (a) testing done for change of ownership at private treaty or at concentration points, (b) costs of gathering, confining, and restraining animals subjected to testing or costs of providing necessary facilities and assistance, (c) costs of testing to qualify or maintain herd accreditation, or (d) indemnity for any animal destroyed as a result of being affected with bovine tuberculosis.

(4) The department is not liable for actual or incidental costs incurred by any person due to departmental actions in enforcing the Bovine Tuberculosis Act.

Source: Laws 2007, LB110, § 13.

54-706.14 Tuberculin; injection or application; limitations.

(1) No person other than an accredited veterinarian shall inject or apply tuberculin into or on any animal.

(2) No person, including a veterinarian, shall inject or apply tuberculin into or on any animal for the purpose of plugging, for the purpose of fraudulently concealing the presence of bovine tuberculosis in such animal, or for the purpose of preventing future reactions to tuberculin.

Source: Laws 2007, LB110, § 14.

54-706.15 Department; enforcement powers; Attorney General or county attorney; powers and duties.

(1) In order to insure compliance with the Bovine Tuberculosis 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 the rules and regulations adopted and promulgated under the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which violations of the act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay. It shall also be the duty of the Attorney General or county attorney of the county in which violation of the act occurred to prosecute violations without delay.

(3) This section does not require the department to report all acts for prosecution if in the opinion of the Director of Agriculture the public interest will best be served through other administrative, criminal, or civil actions.

Source: Laws 2007, LB110, § 15.

54-706.16 Violations; department powers; hearing; order or other action; appeal.

(1) Whenever the Director of Agriculture or the State Veterinarian has reason to believe that any person has violated any of the provisions of the Bovine Tuberculosis Act or any rules or regulations adopted and promulgated under the act, an order may be entered requiring such person to appear before the director and show cause why an order should not be entered requiring such person to cease and desist from the violations charged. Such order shall set forth the alleged violations, fix the time and place of the hearing, and provide for notice thereof which shall be given not less than twenty days before the date of such hearing. After a hearing, or if the person charged with such violation fails to appear at the time of such hearing, if the director finds such person to be in violation, the director shall enter an order requiring such person to cease and desist from the specific acts, practices, or omissions.

(2) Any person aggrieved by any order entered by the director or other action of the director under the Bovine Tuberculosis Act may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) This section does not prevent the department from first pursuing any other administrative, civil, or criminal actions provided in the Bovine Tuberculosis Act when there is a violation of the act or rules and regulations adopted and promulgated under the act.

Source: Laws 2007, LB110, § 16.

Cross References

Administrative Procedure Act, see section 84-920.

54-706.17 Violations of act; penalty.

Any person violating the Bovine Tuberculosis Act or any rule or regulation adopted and promulgated under the act for which no penalty is otherwise provided is guilty of a Class II misdemeanor.

Source: Laws 2007, LB110, § 17.

54-707 Repealed. Laws 2007, LB 110, § 20.

54-708 Repealed. Laws 2007, LB 110, § 20.

54-709 Repealed. Laws 2007, LB 110, § 20.

54-710 Repealed. Laws 2007, LB 110, § 20.

54-711 Repealed. Laws 2007, LB 110, § 20.

54-712 Repealed. Laws 2007, LB 110, § 20.

54-713 Repealed. Laws 2007, LB 110, § 20.

54-714 Repealed. Laws 2007, LB 110, § 20.

54-715 Repealed. Laws 2007, LB 110, § 20.

54-716 Repealed. Laws 2007, LB 110, § 20.

54-717 Repealed. Laws 2007, LB 110, § 20.

54-718 Repealed. Laws 2007, LB 110, § 20.

54-719 Repealed. Laws 2007, LB 110, § 20.

54-720 Repealed. Laws 2007, LB 110, § 20.

54-721 Repealed. Laws 2007, LB 110, § 20.

54-722 Repealed. Laws 2007, LB 110, § 20.

(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:

(a) Buried at least four feet below the surface of the ground or completely incinerated or composted on the premises where such animal dies or on an adjacent property under the ownership and control of the owner or custodian. Any vehicle used by the owner or custodian to transport such dead animal shall be constructed in such a manner that the contents are covered and will not fall, leak, or spill therefrom. Violation of this subdivision is a traffic infraction as defined in section 60-672; or

(b) Transported by a licensed rendering establishment to either a rendering establishment licensed under the Nebraska Meat and Poultry Inspection Law or to a facility with a permit to operate as a landfill under the Integrated Solid Waste Management Act. The operator of a landfill is not required by this subdivision to accept dead animals.

(2) The Department of Agriculture shall regulate the composting of livestock carcasses and shall adopt and promulgate rules and regulations governing the same. Any person incorporating livestock carcasses into a composting facility shall follow the operating procedures established by the Department of Agriculture in consultation with the University of Nebraska Institute of Agriculture and Natural Resources.

(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) In addition to methods listed in subsections (1) and (2) of this section, animal carcasses or carcass parts may be disposed of by a veterinary clinic or veterinary diagnostic laboratory by alkaline hydrolysis tissue digestion. For purposes of this section, alkaline hydrolysis tissue digestion means a process that utilizes an alkaline agent and heat to catalyze the decomposition and reduction of biological tissues. This section shall not exempt the products of alkaline hydrolysis tissue digestion from any applicable law, rule, or regulation governing disposal of wastes.

(5) 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; Laws 2010, LB882, § 1.
Operative date October 1, 2010.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.
Nebraska Meat and Poultry Inspection Law, see section 54-1901.

54-744.01 Dead animals; carcasses; disposal facilities; registration; when.

(1) Livestock carcasses may be disposed of in a research or demonstration facility for innovative livestock disposal methods registered with the Department of Agriculture, except that a research or demonstration facility of liquefaction shall not be registered under this section and liquefaction shall not be permitted as a method of livestock disposal. The registration of a facility under this section shall contain a description of the facility, the location and proposed duration of the research or demonstration, and a description of the method of disposal to be utilized. The department may register up to five such research or demonstration facilities conducted in conjunction with private livestock operations which meet all of the following conditions:

(a) The project is designed and conducted by one or more research faculty of the University of Nebraska;

(b) The project does not duplicate other research or demonstration projects;

(c) The project sponsors submit annual reports on the project and a final report at the conclusion of the project;

(d) The project employs adequate safeguards against disease transmission or environmental contamination; and

(e) The project meets any other conditions deemed prudent by the director.

(2) It is the intent of the Legislature that the department register at least one research or demonstration facility for innovative livestock disposal methods which shall be located upon the premises of an animal feeding operation as defined in section 54-2417. Before registering such facility, the department shall first consult with the Department of Environmental Quality and the Department of Health and Human Services. The Department of Agriculture may revoke the registration of the facility at any time if the director has reason to believe that the facility no longer meets the conditions for registration.

(3) Only the carcasses of livestock that have died upon the animal feeding operation premises where a research or demonstration facility for innovative

livestock disposal methods is located may be disposed of at such facility. Carcasses from other locations shall not be transported to such facility for disposal.

(4) A facility registered under this section is exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

Source: Laws 2001, LB 438, § 20; Laws 2004, LB 916, § 4; Laws 2007, LB296, § 225.

Cross References

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

54-747 Diseased animals; order for destruction; notice; protest; examination.

Whenever any animal has been adjudged to be affected with any infectious, contagious, or otherwise transmissible disease, other than a disease for which specific legislation exists, and has been ordered killed, the owner or custodian thereof shall be notified of such finding and order. Within forty-eight hours thereafter, such owner or custodian may file a protest with the Department of Agriculture stating under oath that to the best of his or her knowledge and belief such animal is free from such infectious, contagious, or otherwise transmissible disease. Thereupon, an examination of the animal involved shall be made by three veterinarians, graduates of a college of veterinary medicine which has been approved by the Department of Health and Human Services as a preliminary qualification for admission to practice veterinary medicine in the state. One of such veterinarians shall be appointed by the department, one by the person making such protest, and the two thus appointed shall choose the third. In case all three veterinarians or any two of them find such animal to be free from such infectious, contagious, or otherwise transmissible disease, the expense of such examination shall be paid by the state. In case the three veterinarians or any two of them find such animal to be affected with such infectious, contagious, or otherwise transmissible disease, the expense of the examination shall be paid by the person making the protest. The department and the person making such protest shall be bound by the result of such examination.

Source: Laws 1927, c. 12, art. VIII, § 6, p. 93; C.S.1929, § 54-943; R.S.1943, § 54-747; Laws 1969, c. 451, § 2, p. 1537; Laws 1993, LB 267, § 12; Laws 1996, LB 1044, § 279; Laws 2007, LB296, § 226.

54-750 Diseased animals; harboring or sale prohibited; penalties.

It shall be unlawful for any person to knowingly harbor, sell, or otherwise dispose of any animal or any part thereof affected with an infectious, contagious, or otherwise transmissible disease except as provided by sections 54-701 to 54-753 and 54-7,105 to 54-7,108, and the rules and regulations prescribed by the Department of Agriculture thereunder. Any person so offending shall be deemed guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

Source: Laws 1927, c. 12, art. VIII, § 9, p. 94; C.S.1929, § 54-946; R.S.1943, § 54-750; Laws 1977, LB 39, § 23; Laws 1993, LB 267, § 13; Laws 2006, LB 856, § 21.

54-751 Rules and regulations; violations; penalties.

It shall be unlawful for any person to violate any rule or regulation prescribed and promulgated by the Department of Agriculture pursuant to authority granted by sections 54-701 to 54-753 and 54-7,105 to 54-7,108, and any person so offending shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

Source: Laws 1927, c. 12, art. VIII, § 10, p. 94; C.S.1929, § 54-947; R.S.1943, § 54-751; Laws 1977, LB 39, § 24; Laws 2001, LB 438, § 17; Laws 2006, LB 856, § 22.

54-752 Violations; penalties.

Any person violating any of the provisions of sections 54-701 to 54-753 and 54-7,105 to 54-7,108 shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

Source: Laws 1927, c. 12, art. VIII, § 13, p. 95; C.S.1929, § 54-950; R.S.1943, § 54-752; Laws 1953, c. 184, § 8, p. 581; Laws 1977, LB 39, § 25; Laws 2001, LB 438, § 18; Laws 2006, LB 856, § 23.

54-753 Prevention of disease; writ of injunction available.

The penal provisions of section 54-752 shall not be exclusive, but the district courts of this state, in the exercise of their equity jurisdiction, may, by injunction, compel the observance of, and by that remedy enforce, the provisions of sections 54-701 to 54-753 and 54-7,105 to 54-7,108 and the rules and regulations established and promulgated by the Department of Agriculture.

Source: Laws 1927, c. 12, art. VIII, § 14, p. 95; C.S.1929, § 54-951; R.S.1943, § 54-753; Laws 2001, LB 438, § 19; Laws 2006, LB 856, § 24.

54-753.06 Compliance with exotic animal auction and swap meet laws; compliance with game laws required.

Compliance with sections 54-7,105 to 54-7,108 does not relieve a person of the requirement to comply with the provisions of sections 37-477 to 37-479.

Source: Laws 2006, LB 856, § 10.

(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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

54-777 Confirmation of anthrax; approved laboratory.

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

Source: Laws 2009, LB99, § 14.

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.

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.

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.

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.

(i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS

54-7,105 Purpose of sections.

The purpose of sections 54-7,105 to 54-7,108 is to authorize the Bureau of Animal Industry to require exotic animal auction or swap meet organizers to notify the bureau of any scheduled exotic animal auction or swap meet and to maintain records for animal disease tracking purposes. Exotic animals sold at exotic animal auctions or swap meets are often foreign to the United States or to the State of Nebraska. These exotic animals may carry dangerous, infectious, contagious, or otherwise transmissible diseases, including foreign animal diseases, which could pose a threat to Nebraska's livestock health and the livestock industry.

Source: Laws 2006, LB 856, § 6.

Cross References

Definitions, see section 54-701.03.
Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.
Violations, penalties, see section 54-752.

54-7,106 Notification requirements.

An exotic animal auction or swap meet organizer shall notify the Bureau of Animal Industry at least thirty days prior to the date on which the exotic animal auction or swap meet is to be held. Notification shall include the location, time, and dates of the exotic animal auction or swap meet and the name and address of the exotic animal auction or swap meet organizer. Notification shall be made in writing or by facsimile transmission.

Source: Laws 2006, LB 856, § 7.

Cross References

Definitions, see section 54-701.03.

Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.
Violations, penalties, see section 54-752.

54-7,107 Records; contents; access by department.

(1) An exotic animal auction or swap meet organizer shall maintain records for each exotic animal auction or swap meet such organizer arranges, organizes, leases areas for, or otherwise coordinates at least five years after the date of the exotic animal auction or swap meet. The records shall include:

(a) The name, address, and telephone number of the exotic animal auction or swap meet organizer;

(b) The name and address of all persons who purchased, sold, traded, bartered, gave away, or otherwise transferred an exotic animal at the exotic animal auction or swap meet;

(c) The number of and species or type of each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or swap meet;

(d) The date of purchase, sale, trade, barter, or other transfer of an exotic animal at the exotic animal auction or swap meet; and

(e) A copy of the completed certificate of veterinary inspection, if required under the Animal Importation Act or any rules or regulations adopted and promulgated under the act or if the exotic animal is to be exported to another state, for each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or swap meet.

(2) An exotic animal auction or swap meet organizer shall, during all reasonable times, permit authorized employees and agents of the department to have access to and to copy any or all records relating to his or her exotic animal auction or swap meet business.

(3) When necessary for the enforcement of sections 54-7,105 to 54-7,108 or any rules and regulations adopted and promulgated pursuant to such sections, the authorized employees and agents of the department may access the records required by this section.

Source: Laws 2006, LB 856, § 8.

Cross References

Animal Importation Act, see section 54-784.01.
Definitions, see section 54-701.03.
Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.
Violations, penalties, see section 54-752.

54-7,108 Prohibited transfers.

No beef or dairy cattle, calves, swine, bison, or sheep sold for wool or food, goats sold for dairy, food, or fiber, or domesticated cervine animals shall be purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or swap meet. An exotic animal auction or swap meet organizer shall contact the Bureau of Animal Industry if a particular animal cannot be readily identified as an animal that is prohibited from being purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or swap meet under this section.

Source: Laws 2006, LB 856, § 9.

Cross References

Definitions, see section 54-701.03.
Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.
Violations, penalties, see section 54-752.

ARTICLE 8
COMMERCIAL FEED

Section
54-857. Commercial Feed Administration Cash Fund; created; use; investment.

54-857 Commercial Feed Administration Cash Fund; created; use; investment.

All money received pursuant to the Commercial Feed Act shall be remitted by the director to the State Treasurer for credit to the Commercial Feed Administration Cash Fund which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Commercial Feed Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 322, § 11; Laws 1995, LB 7, § 57; Laws 2008, LB961, § 3; Laws 2009, First Spec. Sess., LB3, § 29.
Effective date November 21, 2009.

Cross References

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

ARTICLE 9
LIVESTOCK ANIMAL WELFARE ACT

Section
54-901. Act, how cited.
54-902. Terms, defined.
54-903. Abandonment or cruel neglect; mistreatment; prohibited acts; violation; penalty.
54-904. Indecency with a livestock animal; penalty.
54-905. Court order for reimbursement of expenses; liability for expenses.
54-906. Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; liability.
54-907. Act; applicability.
54-908. Employee of governmental livestock animal control or animal abuse agency; duty to report suspected criminal activity; immunity from liability; contents of report; form; failure to report; penalty.
54-909. Conviction; court order not to own or possess livestock animal; violation; penalty; seizure of livestock animal.
54-910. Livestock animal health care professional; duty to report suspected criminal activity; immunity from liability.
54-911. Prohibited acts relating to equine; violation; penalty.
54-912. Prohibited acts relating to bovine; violation; penalty.

54-901 Act, how cited.

Sections 54-901 to 54-912 shall be known and may be cited as the Livestock Animal Welfare Act.

Source: Laws 2010, LB865, § 1.
Effective date July 15, 2010.

54-902 Terms, defined.

For purposes of the Livestock Animal Welfare Act:

(1) Abandon means to leave a livestock animal in one's care, whether as owner or custodian, for any length of time without making effective provision for the livestock animal's food, water, or other care as is reasonably necessary for the livestock animal's health;

(2) Animal welfare practice means veterinarian practices and animal husbandry practices common to the livestock animal industry, including transport of livestock animals from one location to another;

(3) Bovine means a cow, an ox, or a bison;

(4) Cruelly mistreat means to knowingly and intentionally kill or cause physical harm to a livestock animal in a manner that is not consistent with animal welfare practices;

(5) Cruelly neglect means to fail to provide a livestock animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the livestock animal's health;

(6) Equine means a horse, pony, donkey, mule, hinny, or llama;

(7) Euthanasia means the destruction of a livestock animal by commonly accepted veterinary practices;

(8) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local laws, rules, regulations, or ordinances. Law enforcement officer also includes any inspector under the Commercial Dog and Cat Operator Inspection Act to the extent that such inspector may exercise the authority of a law enforcement officer under section 28-1012 while in the course of performing inspection activities under the Commercial Dog and Cat Operator Inspection Act;

(9) Livestock animal means any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, or poultry; and

(10) Serious injury or illness includes any injury or illness to any livestock animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

Source: Laws 2010, LB865, § 2.
Effective date July 15, 2010.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

54-903 Abandonment or cruel neglect; mistreatment; prohibited acts; violation; penalty.

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects a livestock animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the livestock animal, in which case it is a Class IV felony.

(2) A person who cruelly mistreats a livestock animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

Source: Laws 2010, LB865, § 3.
Effective date July 15, 2010.

54-904 Indecency with a livestock animal; penalty.

A person commits indecency with a livestock animal when such person subjects an animal to sexual penetration as defined in section 28-318. Indecency with a livestock animal is a Class III misdemeanor.

Source: Laws 2010, LB865, § 4.
Effective date July 15, 2010.

54-905 Court order for reimbursement of expenses; liability for expenses.

(1) In addition to any other sentence given for a violation of section 54-903 or 54-904, the sentencing court may order the defendant to reimburse a public or private agency for expenses incurred in conjunction with the care, impoundment, or disposal of a livestock animal involved in the violation of such section. Whenever the court believes that such reimbursement is a proper sentence or at the prosecuting attorney's request, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the expenses incurred. The court may order that reimbursement be made immediately, in specified installments, or within a specified period of time, not to exceed five years after the date of judgment.

(2) Even if reimbursement for expenses is not ordered under subsection (1) of this section, the defendant shall be liable for all expenses incurred by a public or private agency in conjunction with the care, impoundment, or disposal of a livestock animal. The expenses shall be a lien upon the livestock animal.

Source: Laws 2010, LB865, § 5.
Effective date July 15, 2010.

54-906 Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; liability.

(1) Any law enforcement officer who has reason to believe that a livestock animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the livestock animal or livestock animals.

(2) Any law enforcement officer who has reason to believe that a livestock animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner as prescribed in sections 29-422 to 29-429.

(3) Any livestock animal, equipment, device, or other property or things involved in a violation of section 54-903 or 54-904 shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct.

(4) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

Source: Laws 2010, LB865, § 6.
Effective date July 15, 2010.

54-907 Act; applicability.

The Livestock Animal Welfare Act shall not apply to:

(1) Care or treatment of a livestock animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his or her employment, that occurs while acting in his or her professional capacity, or that conforms to commonly accepted veterinary practices;

(2) Euthanasia of a livestock animal or livestock animals as conducted by the owner or by his or her agent or a veterinarian upon the owner's request;

(3) Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;

(4) Commonly accepted animal welfare practices with respect to livestock animals and commercial livestock operations, including their transport from one location to another and nonnegligent actions taken by personnel or agents of the Department of Agriculture or the United States Department of Agriculture in the performance of duties prescribed by law;

(5) Commonly followed practices occurring in conjunction with the slaughter of animals for food or byproducts;

(6) Commonly accepted animal training practices; and

(7) Commonly accepted practices occurring in conjunction with sanctioned rodeos, animal racing, and pulling contests.

Source: Laws 2010, LB865, § 7.
Effective date July 15, 2010.

Cross References

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

54-908 Employee of governmental livestock animal control or animal abuse agency; duty to report suspected criminal activity; immunity from liability; contents of report; form; failure to report; penalty.

(1) For purposes of this section:

(a) Employee means any employee of a governmental agency dealing with livestock animal control or animal abuse; and

(b) Reasonably suspects means a basis for reporting knowledge or a set of facts that would lead a person of ordinary care and prudence to believe and conscientiously entertain a strong suspicion that criminal activity is at hand or that a crime has been committed.

(2) Any employee, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the employee to reasonably suspect that a livestock animal has

been abandoned, cruelly neglected, or cruelly mistreated shall report such to the entity or entities that investigate such reports in that jurisdiction.

(3) The report of an employee shall be made within two working days of acquiring the information concerning the livestock animal by facsimile transmission of a written report presented in the form described in subsection (5) of this section or by telephone. When an immediate response is necessary to protect the health and safety of the livestock animal or others, the report of an employee shall be made by telephone as soon as possible.

(4) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected livestock animal abandonment, cruel neglect, or cruel mistreatment. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(5) A report made by an employee pursuant to this section shall include:

(a) The reporter's name and title, business address, and telephone number;

(b) The name, if known, of the livestock animal owner or custodian, whether a business or individual;

(c) A description of the livestock animal or livestock animals involved, person or persons involved, and location of the livestock animal or livestock animals and the premises; and

(d) The date, the time, and a description of the observation or incident which led the reporter to reasonably suspect livestock animal abandonment, cruel neglect, or cruel mistreatment and any other information the reporter believes may be relevant.

(6) A report made by an employee pursuant to this section may be made on preprinted forms prepared by the entity or entities that investigate reports of livestock animal abandonment, livestock animal cruel neglect, or livestock animal cruel mistreatment in that jurisdiction. The form shall include space for the information required under subsection (5) of this section.

(7) When two or more employees jointly have observed or reasonably suspected livestock animal abandonment, livestock animal cruel neglect, or livestock animal cruel mistreatment and there is agreement between or among them, a report may be made by one person by mutual agreement. Any such reporter who has knowledge that the person designated to report has failed to do so shall thereafter make the report.

(8) Any employee failing to report under this section shall be guilty of an infraction.

Source: Laws 2010, LB865, § 8.
Effective date July 15, 2010.

54-909 Conviction; court order not to own or possess livestock animal; violation; penalty; seizure of livestock animal.

(1) If a person is convicted of a Class IV felony under section 54-903, the sentencing court shall order such person not to own or possess a livestock animal for at least five years after the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

(2) If a person is convicted of a Class I misdemeanor under section 54-903 or a Class III misdemeanor under section 54-904, the sentencing court may order such person not to own or possess any livestock animal after the date of conviction, but such time restriction, if any, shall not exceed five years. Any person violating such court order shall be guilty of a Class IV misdemeanor.

(3) Any livestock animal involved in a violation of a court order under subsection (1) or (2) of this section shall be subject to seizure by law enforcement.

Source: Laws 2010, LB865, § 9.
Effective date July 15, 2010.

54-910 Livestock animal health care professional; duty to report suspected criminal activity; immunity from liability.

(1) Any livestock animal health care professional, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the livestock animal health care professional to reasonably suspect that a livestock animal has been abandoned, cruelly neglected, or cruelly mistreated shall report such treatment to an entity that investigates such reports in the appropriate jurisdiction.

(2) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected abandonment, cruel neglect, or cruel mistreatment of a livestock animal. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(3) For purposes of this section, a livestock animal health care professional means a licensed veterinarian as defined in section 38-3310 or a licensed veterinary technician as defined in section 38-3311 whose practice involves care of livestock animals.

Source: Laws 2010, LB865, § 10.
Effective date July 15, 2010.

54-911 Prohibited acts relating to equine; violation; penalty.

(1) No person shall intentionally trip or cause to fall, or lasso or rope the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping or causing to fall, or lassoing or roping the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

Source: Laws 2010, LB865, § 11.
Effective date July 15, 2010.

54-912 Prohibited acts relating to bovine; violation; penalty.

(1) No person shall intentionally trip, cause to fall, or drag any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping, causing to fall, or dragging of any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest shall not

be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

Source: Laws 2010, LB865, § 12.
Effective date July 15, 2010.

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.

ARTICLE 24

LIVESTOCK WASTE MANAGEMENT ACT

Section
54-2416. Act, how cited.
54-2417. Terms, defined.
54-2418. Department; duties.
54-2419. Permits; approval; conditions; restrictions.
54-2422. Inspection and construction and operating permit requirements; exemptions.
54-2423. Animal feeding operation; request inspection; when; fees; department; duties.
54-2424. Animal feeding operation; operating requirements; when.
54-2425. National Pollutant Discharge Elimination System permit; department; duties.
54-2426. Applications; contents.
54-2428. National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.
54-2429. National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of Natural Resources; Department of Environmental Quality; powers; applicability of Engineers and Architects Regulation Act.
54-2431. Applications; rejection; when; disciplinary actions; grounds.
54-2432. Acts prohibited.
54-2433. Department; contracts authorized.
54-2435. Council; rules and regulations.
54-2436. Reinstatement of operating permit; conditions; fee.
54-2437. Conditional use permit or special exception; county planning commission or county board; powers.
54-2438. Major modification; applications; contents.

54-2416 Act, how cited.

Sections 54-2416 to 54-2438 shall be known and may be cited as the Livestock Waste Management Act.

Source: Laws 1998, LB 1209, § 1; Laws 1999, LB 822, § 7; Laws 2003, LB 619, § 15; R.S.Supp.,2003, § 54-2401; Laws 2004, LB 916, § 5; Laws 2006, LB 975, § 1.

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.

54-2418 Department; duties.

The department shall (1) administer the animal feeding operation permitting program in accordance with the National Pollutant Discharge Elimination System of the federal Clean Water Act, 33 U.S.C. 1251 et seq., through the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts and (2) administer the state program for construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.

Source: Laws 2004, LB 916, § 7; Laws 2006, LB 975, § 3.

Cross References

Environmental Protection Act, see section 81-1532.

54-2419 Permits; approval; conditions; restrictions.

(1) No new animal feeding operation shall be issued a National Pollutant Discharge Elimination System permit or a construction and operating permit in any part of a watershed that feeds directly or indirectly into a cold water class A stream, delineated pursuant to section 54-2421.

(2) An existing animal feeding operation may not expand if its livestock waste control facility is located within one mile of a designated cold water class A stream segment delineated pursuant to section 54-2421 and the same cold water class A stream watershed as the animal feeding operation, except that an

existing animal feeding operation used for research sponsored by the University of Nebraska at a facility owned by the University of Nebraska may expand if the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(3) Existing animal feeding operations may receive a new or modified National Pollutant Discharge Elimination System permit, a new or modified construction and operating permit, a modified operating permit, or a modified construction approval if:

(a) The existing animal feeding operation does not currently have a National Pollutant Discharge Elimination System permit or a construction and operating permit and upon inspection by the department a determination is made that one is necessary;

(b) The existing animal feeding operation modifies its operation but does not expand its approved livestock waste control facility;

(c) The existing animal feeding operation's livestock waste control facility is located more than two miles from a designated cold water class A stream segment delineated pursuant to section 54-2421 and in the same cold water class A stream watershed as the animal feeding operation; or

(d) The existing animal feeding operation or livestock waste control facility is located less than two miles but more than one mile from a cold water class A stream delineated pursuant to section 54-2421, and the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(4) The department may deny or restrict an application for a transfer or major modification of an existing National Pollutant Discharge Elimination System permit or a construction and operating permit based upon the potential degradation of a cold water class A stream.

Source: Laws 1998, LB 1209, § 4; Laws 1999, LB 822, § 8; Laws 1999, LB 870, § 7; R.S.Supp.,2002, § 54-2404; Laws 2004, LB 916, § 8; Laws 2006, LB 975, § 4.

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.

Cross References

Environmental Protection Act, see section 81-1532.

54-2423 Animal feeding operation; request inspection; when; fees; department; duties.

(1) If any person owning or operating an animal feeding operation (a) does not hold a National Pollutant Discharge Elimination System permit, an operating permit, or a construction and operating permit or have construction approval, (b) has not been notified by the department that no National Pollutant Discharge Elimination System permit or construction and operating permit is required, or (c) is not exempt under section 54-2422, such person shall, on forms prescribed by the department, request the department to inspect such person's animal feeding operation to determine if a livestock waste control facility is required. If an inspection is requested prior to January 1, 1999, an inspection fee for such inspection shall not be assessed. For inspections requested on or after July 16, 2004, there shall be an inspection fee established by the council with a minimum fee of one hundred dollars and a maximum fee of five hundred dollars. Such fee may be set according to animal capacity.

(2) The department shall, in conjunction with natural resources districts and the Cooperative Extension Service of the University of Nebraska, publicize information to make owners and operators of affected animal feeding operations aware of the need to request an inspection.

(3) Any person required to request an inspection under this section who operates an animal feeding operation after January 1, 2000, without first submitting the request for inspection required under this section shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense. Exceptions to this provision are:

(a) An animal feeding operation exempted by the department from National Pollutant Discharge Elimination System permit requirements prior to July 16, 2004; or

(b) A livestock operation that became an animal feeding operation by enactment of the Livestock Waste Management Act as such act existed on July 16, 2004, but was not required to request an inspection prior to that date.

(4) A person meeting the provisions of subdivision (3)(b) of this section shall request an inspection prior to January 1, 2009, and pay fees required pursuant to subsection (1) of this section.

(5) Any person required to request an inspection under subsection (4) of this section who operates an animal feeding operation after December 31, 2008, shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense.

Source: Laws 1998, LB 1209, § 6; Laws 1999, LB 870, § 8; R.S.Supp.,2002, § 54-2406; Laws 2004, LB 916, § 12; Laws 2006, LB 975, § 6; Laws 2007, LB677, § 1.

Cross References

Environmental Protection Act, see section 81-1532.

54-2424 Animal feeding operation; operating requirements; when.

Any animal feeding operation which was in existence on January 1, 2004, and does not have any permit on March 17, 2006, shall be subject, in addition to any other requirements of the Environmental Protection Act, Livestock Waste Management Act, and rules and regulations adopted and promulgated pursuant to such acts, to the same or substantially similar operating requirements as the requirements that existed on January 1, 2004.

Source: Laws 2004, LB 916, § 13; Laws 2006, LB 975, § 7.

Cross References

Environmental Protection Act, see section 81-1532.

54-2425 National Pollutant Discharge Elimination System permit; department; duties.

(1) After an initial inspection has been conducted pursuant to section 54-2423 for each new application for a construction and operating permit or major modification submitted to the department, the department shall, within ten days, make a determination as to whether a National Pollutant Discharge Elimination System permit is required for the proposed animal feeding operation. If an application has been submitted prior to an initial inspection being conducted pursuant to section 54-2423, such application shall be returned to the applicant without the department conducting any review of the application.

(2) If it is determined that a National Pollutant Discharge Elimination System permit is required, the department shall contact the applicant to determine whether the applicant requests the department to delay review of the construction and operating permit or major modification application until an individual National Pollutant Discharge Elimination System permit application is submitted.

(3) If the applicant requests the department to delay review of the construction and operating permit or major modification application, upon receipt of the individual National Pollutant Discharge Elimination System permit application and the construction and operating permit or major modification application, the applications shall be reviewed simultaneously utilizing the processes and timelines for review of an individual National Pollutant Discharge Elimination System permit application.

(4) If (a) the department determines a National Pollutant Discharge Elimination System permit is not required or (b) if the applicant requests the department to proceed with review of the construction and operating permit or major modification application independent of a National Pollutant Discharge Elimination System permit application, the department shall, for both subdivisions (4)(a) and (4)(b) of this section:

(i) Within five days send a copy of the application to the natural resources district or districts and the county board or boards of the counties in which the livestock waste control facility is located or proposed to be located. The natural resources district or districts and the county board or boards shall have thirty days to comment to the department regarding any conditions that may exist at the proposed site which the department should consider regarding the content

of the application for a construction and operating permit or major modification;

(ii) Within sixty days, (A) issue a proposed decision on the application for a construction and operating permit or major modification and (B) issue a notice providing an opportunity for any interested person to submit written comments on such proposed decision within thirty days after the first day of publication of such notice. The notice shall be published in a daily or weekly newspaper or other publication with general circulation in the area of the existing or proposed animal feeding operation, and a copy of the notice shall be provided to the applicant; and

(iii) Within one hundred ten days approve or deny the application and transmit its findings and conclusions to the applicant.

Source: Laws 2004, LB 916, § 14; Laws 2006, LB 975, § 8.

54-2426 Applications; contents.

Each application for a National Pollutant Discharge Elimination System permit or construction and operating permit shall include, in addition to other requirements, (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application and (2) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged. The nutrient management plan shall be considered a part of the application. For National Pollutant Discharge Elimination System permits, the plan shall, at a minimum, meet and conform to the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq. A copy of the nutrient management plan and supporting documentation shall continuously be kept on file at the department. The operator shall at least annually update changes made to the nutrient management plan as required pursuant to rules and regulations adopted and promulgated by the council. For a construction and operating permit, the plan shall contain, at a minimum, the information which the department required to be included in all nutrient management plans on January 1, 2004.

Source: Laws 2004, LB 916, § 15; Laws 2006, LB 975, § 9.

54-2428 National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.

(1) Any person required to obtain a National Pollutant Discharge Elimination System permit for an animal feeding operation or a construction and operating permit for a livestock waste control facility shall file an application with the department accompanied by the appropriate fees in the manner established by the department. The application fee shall be established by the council with a maximum fee of two hundred dollars. For major modifications to an application or a permit, the fee shall equal the amount of the application fee.

(2) On or before March 1, 2006, and each year thereafter, each person who has a National Pollutant Discharge Elimination System permit or who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and a state operating permit, a construction and operating permit, or a construction approval issued

pursuant to the Environmental Protection Act or the Livestock Waste Management Act shall pay a per head annual fee based on the permitted capacity identified in the permit for that facility. The department shall invoice each permittee by February 1, 2006, and February 1 of each year thereafter.

(3) The initial annual fee shall be: Beef cattle, ten cents per head; veal calves, ten cents per head; dairy cows, fifteen cents per head; swine larger than fifty-five pounds, four dollars per one hundred head or fraction thereof; swine less than fifty pounds, one dollar per one hundred head or fraction thereof; horses, twenty cents per head; sheep or lambs, one dollar per one hundred head or fraction thereof; turkeys, two dollars per one thousand head or fraction thereof; chickens or ducks with liquid manure facility, three dollars per one thousand head or fraction thereof; and chickens or ducks with other than liquid manure facility, one dollar per one thousand head or fraction thereof. This fee structure may be reviewed in fiscal year 2007-08.

(4) Beginning in fiscal year 2007-08, the department shall annually review and adjust the fee structure in this section and section 54-2423 to ensure that fees are adequate to meet twenty percent of the program costs from the previous fiscal year. All fees collected under this section and sections 54-2423, 54-2435, and 54-2436 shall be remitted to the State Treasurer for credit to the Livestock Waste Management Cash Fund which is created for the purposes described in the Livestock Waste Management Act. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Livestock Waste Management 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.

(5) On or before January 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all direct and indirect costs incurred in the previous fiscal year in carrying out the Livestock Waste Management Act, including the number of inspections conducted, the number of animal feeding operations with livestock waste control facilities, the number of animal feeding operations inspected, the size of the livestock waste control facilities, the results of water quality monitoring programs, and other elements relating to carrying out the act. The Appropriations Committee of the Legislature shall review the report in its analysis of executive programs in order to verify that the revenue generated from fees was used solely to offset appropriate and reasonable costs associated with carrying out the act.

Source: Laws 1998, LB 1209, § 8; Laws 1999, LB 870, § 10; R.S.Supp.,2002, § 54-2408; Laws 2004, LB 916, § 17; Laws 2006, LB 975, § 10; Laws 2009, First Spec. Sess., LB3, § 30. Effective date November 21, 2009.

Cross References

Environmental Protection Act, see section 81-1532.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

54-2429 National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of Natural Resources; Department of Environmental Quality; powers; applicability of Engineers and Architects Regulation Act.

(1) An applicant for a National Pollutant Discharge Elimination System permit or a construction and operating permit under the Environmental Protection Act or the Livestock Waste Management Act shall, before issuance by the Department of Environmental Quality, obtain any necessary approvals from the Department of Natural Resources under the Safety of Dams and Reservoirs Act and certify such approvals to the Department of Environmental Quality. The Department of Environmental Quality, with the concurrence of the Department of Natural Resources, may require the applicant to obtain approval from the Department of Natural Resources for any dam, holding pond, or lagoon structure which would not otherwise require approval under the Safety of Dams and Reservoirs Act but which in the event of a failure could result in a significant discharge into waters of the state and have a significant impact on the environment. The Department of Environmental Quality may provide for the payment of such costs of the Department of Natural Resources with revenue generated under section 54-2428.

(2) An applicant required to obtain a National Pollutant Discharge Elimination System permit is subject to the requirements of the Engineers and Architects Regulation Act.

(3) An applicant who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit is subject to the requirements of the Engineers and Architects Regulation Act.

(4) An applicant who has a small or medium animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit, but not required to obtain a National Pollutant Discharge Elimination System permit, is exempt from the Engineers and Architects Regulation Act.

(5) The department may require an engineering evaluation or assessment performed by a licensed professional engineer for a livestock waste control facility if after an inspection: (a) The department determines that the facility has (i) visible signs of structural breakage below the permanent pool, (ii) signs of discharge or proven discharge due to structural weakness, (iii) improper maintenance, or (iv) inadequate capacity; or (b) the department has reason to believe that an animal feeding operation with a livestock waste control facility has violated or threatens to violate the Environmental Protection Act, the Livestock Waste Management Act, or any rules or regulations adopted and promulgated under such acts. Animal feeding operations not required to have a permit under the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated pursuant to such acts are exempt from the Engineers and Architects Regulation Act.

Source: Laws 1998, LB 1209, § 12; Laws 1999, LB 870, § 13; Laws 2000, LB 900, § 243; Laws 2003, LB 619, § 16; R.S.Supp.,2003, § 54-2412; Laws 2004, LB 916, § 18; Laws 2005, LB 335, § 80; Laws 2006, LB 975, § 11; Laws 2007, LB313, § 1.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.
Environmental Protection Act, see section 81-1532.
Safety of Dams and Reservoirs Act, see section 46-1601.

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.

54-2432 Acts prohibited.

Except as provided in section 54-2422, it shall be unlawful for any person to:

(1) Construct or operate an animal feeding operation prior to an inspection from the department, unless exempted from inspection by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(2) Construct a livestock waste control facility without first obtaining a construction and operating permit from the department, unless exempted from the requirement for a construction and operating permit by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts. The use of

a borrow site for construction of other components of the animal feeding operation does not constitute construction of the livestock waste control facility;

(3) Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirement for a livestock waste control facility by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(4) Discharge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System permit, a construction and operating permit, or an exemption from the department, if required by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts; or

(5) Violate the terms of a National Pollutant Discharge Elimination System permit or construction and operating permit or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.

Source: Laws 2004, LB 916, § 21; Laws 2006, LB 975, § 13.

Cross References

Environmental Protection Act, see section 81-1532.

54-2433 Department; contracts authorized.

In carrying out its responsibilities under the Livestock Waste Management Act, the department may contract with the various natural resources districts as appropriate. The contract may include all tasks or duties necessary to carry out the act but shall not enable the natural resources districts to issue National Pollutant Discharge Elimination System permits or construction and operating permits or initiate enforcement proceedings. The contract may provide for payment of natural resources districts' costs by the department.

Source: Laws 1998, LB 1209, § 11; Laws 1999, LB 870, § 12; R.S.Supp.,2002, § 54-2411; Laws 2004, LB 916, § 22; Laws 2006, LB 975, § 14.

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.

Cross References

Environmental Protection Act, see section 81-1532.

54-2436 Reinstatement of operating permit; conditions; fee.

(1) Any person who held an operating permit on December 31, 2005, and whose permit expired pursuant to rules and regulations may file a request for reinstatement of the operating permit subject to the following conditions:

(a) The request must be filed on or before December 31, 2007;

(b) The person shall certify that the livestock operation is in compliance with the operating permit as it existed on the date the operating permit expired; and

(c) The request shall be accompanied by a twenty-five-dollar nonrefundable filing fee.

(2) The department shall, upon receipt of a complete and timely request for reinstatement, reinstate the permit with the same conditions as existed when the permit expired.

Source: Laws 2006, LB 975, § 16.

54-2437 Conditional use permit or special exception; county planning commission or county board; powers.

(1) A county planning commission or county board shall grant a conditional use permit or special exception to an existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and the construction or modification of the livestock waste control facility will not increase the animal capacity of such operation. The number of conditional use permits or special exceptions granted to such an operation under this subsection is unlimited.

(2) A county planning commission or county board shall grant a conditional use permit or special exception to an existing beef cattle or dairy cattle animal feeding operation that has an animal capacity of five thousand or fewer beef cattle or three thousand five hundred or fewer dairy cattle that is seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and construction or modification of the livestock waste control facility would allow the animal capacity of the operation to increase not more than:

(a) Five hundred beef cattle if the operation has an existing animal capacity of three thousand beef cattle or fewer;

(b) Three hundred beef cattle if the operation has an existing animal capacity of more than three thousand beef cattle but no more than five thousand beef cattle;

(c) Three hundred fifty dairy cattle if the operation has an existing animal capacity of two thousand dairy cattle or fewer; or

(d) Two hundred ten dairy cattle if the operation has an existing animal capacity of more than two thousand dairy cattle but no more than three thousand five hundred dairy cattle.

Only one conditional use permit or special exception per operation is allowed under this subsection.

Source: Laws 2006, LB 975, § 17.

54-2438 Major modification; applications; contents.

Each application for a major modification of an operating permit, a construction approval, a construction and operating permit, or a National Pollutant Discharge Elimination System permit or an application for a construction and operating permit or a National Pollutant Discharge Elimination System permit shall contain (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application, (2) a detailed description of the major modification requested, (3) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged, and (4) such information as required by rules and regulations adopted and promulgated by the council.

Source: Laws 2006, LB 975, § 18.

ARTICLE 26

COMPETITIVE LIVESTOCK MARKETS ACT

Section
54-2601. Act, how cited.
54-2603. Legislative findings.
54-2627.01. Preemption by federal Livestock Mandatory Reporting Act of 1999; director; duties.

54-2601 Act, how cited.

Sections 54-2601 to 54-2631 shall be known and may be cited as the Competitive Livestock Markets Act.

Source: Laws 1999, LB 835, § 1; Laws 2006, LB 856, § 25.

54-2603 Legislative findings.

(1) The Legislature finds that family farmers and ranchers have been experiencing, with greater frequency, severely depressed livestock market prices. These market conditions are disproportionately affecting independent producers, which make up the majority of farms and ranches, and are threatening the economic stability of Nebraska's rural communities. The Legislature further finds that packer concentration, vertical integration, and contractual arrangements are undermining the system of price discovery. In the absence of any meaningful federal response to the conditions described, the purpose of the Competitive Livestock Markets Act is to increase livestock market price transparency, ensuring that producers can compete in a free and open market. This is accomplished by establishing minimum price and contract reporting require-

ments, eliminating volume premiums and volume-based incentives, scrutinizing livestock production contracts and marketing agreements, and statutorily reinforcing the constitutional prohibition against the ownership, keeping, or feeding of livestock by packers for the production of livestock or livestock products.

(2) The Legislature further finds that the mandatory reporting of price and other terms in negotiated or contract procurement of livestock that has been in place under the federal Livestock Mandatory Reporting Act of 1999 is an important reform of livestock markets that contributes to greater market transparency, enhances the ability of livestock sellers to more competently and confidently market livestock, and lessens the existence of conditions under which market price manipulation and unfair preference or advantage in packer procurement practices can occur. It is a purpose of the Competitive Livestock Markets Act to provide for the continuation of mandatory price reporting for the benefit of Nebraska producers and protection of the integrity of livestock markets in Nebraska in the event of termination of the federal Livestock Mandatory Reporting Act of 1999 and its preemption of similar state price reporting laws as well as to provide for an orderly implementation of the state price reporting system authorized by the Competitive Livestock Markets Act, should Congress fail to reauthorize the federal Livestock Mandatory Reporting Act of 1999.

Source: Laws 1999, LB 835, § 3; Laws 2006, LB 856, § 26.

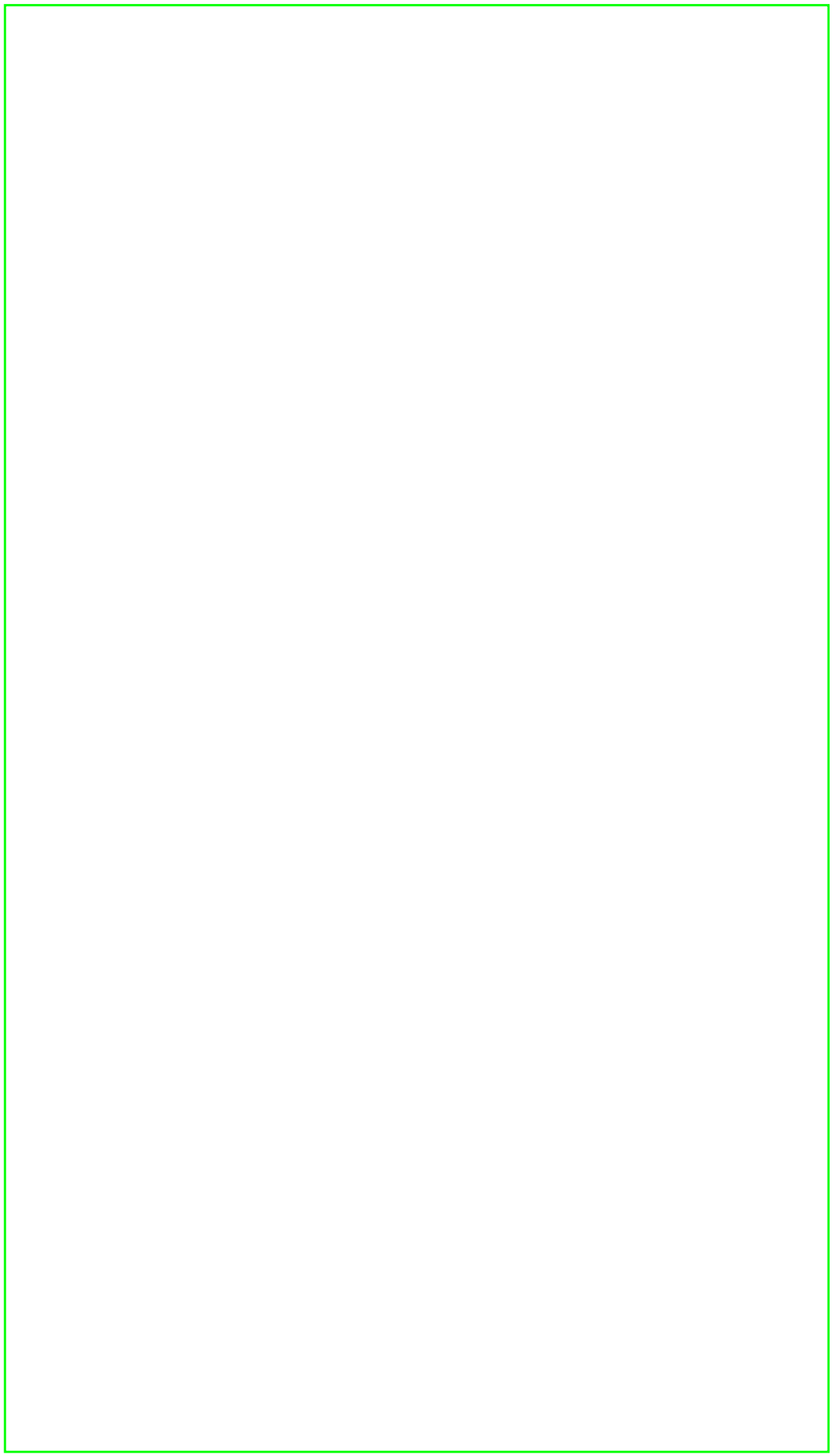
54-2627.01 Preemption by federal Livestock Mandatory Reporting Act of 1999; director; duties.

(1) Sections 54-2607 to 54-2627 are preempted by the federal Livestock Mandatory Reporting Act of 1999, 7 U.S.C. 1635 to 1636h, when such federal act is in effect.

(2)(a) If Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999 before December 1, 2006, the director shall, on December 1, 2006, or as soon before or after as practicable, prepare a budget and an appropriation request from the General Fund, from the Competitive Livestock Markets Cash Fund, or from other cash funds under the control of the director, for submission to the Legislature in an amount sufficient to enable the department to carry out its duties under sections 54-2607 to 54-2627, and such sections shall become applicable on October 1, 2007.

(b) If, on or after December 1, 2006, Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999, the director shall prepare such budget and appropriation request on or before a date that is twelve calendar months after the date such federal act expires or is terminated, and sections 54-2607 to 54-2627 shall become applicable on the first day of the calendar quarter that is eighteen months after the date such sections are not preempted by the federal act. No General Funds shall be appropriated for implementation of sections 54-2607 to 54-2627 after the date of commencement provided for in this section of reporting of price and other data regarding livestock transactions pursuant to sections 54-2613 and 54-2623. It is the intent of the Legislature that any General Funds appropriated for purposes of this section shall be reimbursed to the General Fund.

Source: Laws 2006, LB 856, § 27.



CHAPTER 55
MILITIA

Article.
1. Military Code. 55-101 to 55-139.01.
5. Family Military Leave Act. 55-501 to 55-507.

ARTICLE 1
MILITARY CODE

Section
55-101. Military code; how cited.
55-120. National Guard; Military Department; officers; personnel; rank.
55-121. Adjutant General; qualifications; salary; sources for payment; performance of federal duties; effect.
55-125. Adjutant General; assistants; qualifications.
55-126. Adjutant General; assistants; duties; bond or insurance; salary.
55-131. Adjutant General; property; receipt as trustee; control; disposition; Military Department Cash Fund; created; investment.
55-133. Adjutant General; armories and equipment; assignment; military emergency vehicles; designation.
55-135. National Guard; personnel; number; grade; service.
55-139.01. National Guard; peace officer; powers.

55-101 Military code; how cited.

Sections 55-101 to 55-181 shall be known and may be cited as the Military Code.

Source: Laws 1929, c. 189, § 1, p. 657; C.S.1929, § 55-105; R.S.1943, § 55-101; Laws 1961, c. 272, § 1, p. 806; Laws 1969, c. 459, § 1, p. 1581; Laws 1971, LB 19, § 1; Laws 1991, LB 313, § 1; Laws 2003, LB 69, § 2; Laws 2010, LB550, § 1.
Effective date July 15, 2010.

55-120 National Guard; Military Department; officers; personnel; rank.

The Military Department shall consist of the Adjutant General in the minimum grade of lieutenant colonel, one deputy adjutant general, chief of staff of the Military Department, or deputy director with a minimum grade of colonel, one assistant director for Nebraska Emergency Management Agency affairs, and such other officers and enlisted personnel in the number and grade as prescribed by the United States Department of the Army and Department of the Air Force personnel documents provided to the National Guard or as otherwise authorized.

Source: Laws 1917, c. 205, § 3, p. 483; Laws 1919, c. 121, § 1, p. 288; C.S.1922, § 3304; Laws 1929, c. 189, § 19, p. 661; C.S.1929, § 55-124; R.S.1943, § 55-139; Laws 1953, c. 188, § 17, p. 598; Laws 1963, c. 321, § 2, p. 975; R.R.S.1943, § 55-139; Laws 1969, c. 459, § 18, p. 1587; Laws 1974, LB 983, § 3; Laws 1996, LB 43, § 10; Laws 2010, LB550, § 2.
Effective date July 15, 2010.

55-121 Adjutant General; qualifications; salary; sources for payment; performance of federal duties; effect.

The Adjutant General shall be appointed by the Governor from the active or retired commissioned officers of the National Guard of this state. Such Adjutant General shall be or have been a commissioned officer who has actively served in the National Guard of this state for at least five years, shall have attained at least the grade of lieutenant colonel, and shall be able to become eligible for promotion to general officer. If a retired officer is appointed, he or she shall not have been retired for more than two years at the time he or she is considered for appointment. He or she shall hold his or her office as provided in section 55-136. He or she shall receive for his or her services such salary as the Governor shall direct, payable biweekly, except that such salary shall not exceed the annual pay and allowances of regular military officers of equal rank. If funds made available by the federal government are in excess of the amount payable as directed by the Governor, the excess shall be used to reduce the amount required to be paid by the state. Due to the interrelated nature of the Adjutant General's state and federal duties, the Adjutant General shall not be required to take paid or unpaid leave or leaves of absence to perform his or her federal duties, whether or not under federal orders. The Adjutant General shall continue to receive his or her salary during all such periods. The Adjutant General shall only be required to take leave or leaves of absence during those times when he or she is absent and performing neither his or her state nor federal duties as Adjutant General. This section shall not apply if the Adjutant General is called to active duty of the United States under 10 U.S.C.

Source: Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-141; Laws 1947, c. 196, § 1, p. 639; Laws 1951, c. 182, § 1, p. 685; Laws 1961, c. 273, § 1, p. 807; Laws 1965, c. 341, § 2, p. 972; R.R.S.1943, § 55-141; Laws 1969, c. 459, § 19, p. 1587; Laws 1974, LB 983, § 4; Laws 2004, LB 963, § 1; Laws 2010, LB550, § 3.
Effective date July 15, 2010.

55-125 Adjutant General; assistants; qualifications.

(1) The Adjutant General shall appoint a deputy adjutant general, a chief of staff of the Military Department, or a deputy director. The officer shall hold the minimum grade of colonel as provided in section 55-120. No person shall be eligible for such appointment and service unless he or she is an active member of the Nebraska National Guard. He or she shall have had at least four years of commissioned service in the Nebraska National Guard immediately prior to appointment and shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her appointment as deputy adjutant general, chief of staff of the Military Department, or deputy director.

(2) The chief of the National Guard Bureau shall appoint a United States property and fiscal officer. The officer shall hold the minimum grade of colonel. The Governor shall nominate one or more officers for the position of United States property and fiscal officer after consultation with the Adjutant General. All nominees shall have attained at least the grade of lieutenant colonel and be eligible for promotion to colonel prior to his or her nomination. The United States property and fiscal officer may appoint, with the approval of the

Adjutant General, one or more assistant United States property and fiscal officers, each with the minimum grade of captain. The United States property and fiscal officer and each assistant United States property and fiscal officer shall be appointed from among the active officers of the Nebraska National Guard and shall have been commissioned officers in the Nebraska National Guard for a period of at least four years immediately prior to appointment.

(3) The Adjutant General shall appoint all additional officers, clerks, and caretakers as may be required.

Source: Laws 1917, c. 205, § 4, p. 485; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 833; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-143; Laws 1953, c. 188, § 20, p. 600; Laws 1963, c. 321, § 3, p. 976; R.R.S.1943, § 55-143; Laws 1969, c. 459, § 23, p. 1589; Laws 1974, LB 983, § 5; Laws 1976, LB 614, § 1; Laws 2004, LB 963, § 2; Laws 2010, LB550, § 4. Effective date July 15, 2010.

55-126 Adjutant General; assistants; duties; bond or insurance; salary.

The deputy adjutant general, chief of staff of the Military Department, or deputy director shall aid the Adjutant General by the performance of such duties as may be assigned by the Adjutant General. In case of absence or inability of the Adjutant General, the deputy adjutant general, chief of staff of the Military Department, or deputy director shall perform all or such portion of the duties of the Adjutant General as the latter may expressly delegate to him or her. In the case of absence of both the Adjutant General and the deputy adjutant general, chief of staff of the Military Department, or deputy director, the Adjutant General may delegate the authority to perform the duties of the Adjutant General to any active officer of the Nebraska military who shall hold at least the rank of colonel. The deputy adjutant general, chief of staff of the Military Department, or deputy director shall be bonded or insured as required by section 11-201. The deputy adjutant general, chief of staff of the Military Department, or deputy director shall receive such salary as the Adjutant General shall direct, payable biweekly. Such salary shall not exceed the annual pay and allowances of regular military officers of equal rank, except that when funds made available by the federal government are in excess of the amount payable as directed by the Adjutant General, the excess shall be used to reduce the amount required to be paid by the State of Nebraska.

Source: Laws 1917, c. 205, § 4, p. 486; Laws 1919, c. 121, § 2, p. 290; Laws 1921, c. 234, § 1, p. 834; C.S.1922, § 3305; C.S.1929, § 55-125; R.S.1943, § 55-144; Laws 1947, c. 196, § 2, p. 639; Laws 1951, c. 182, § 2, p. 685; Laws 1963, c. 321, § 4, p. 976; R.R.S.1943, § 55-144; Laws 1969, c. 459, § 24, p. 1589; Laws 1978, LB 653, § 16; Laws 1993, LB 170, § 1; Laws 2004, LB 884, § 28; Laws 2004, LB 963, § 3; Laws 2010, LB550, § 5. Effective date July 15, 2010.

55-131 Adjutant General; property; receipt as trustee; control; disposition; Military Department Cash Fund; created; investment.

The Military Department Cash Fund is created. The fund shall be administered by the Adjutant General. The fund shall consist of all nonfederal revenue received by the National Guard pursuant to this section. The Adjutant General

is hereby authorized to accept by devise, gift, or otherwise and hold, as trustee, for the benefit and use of the National Guard or any part thereof any property, real or personal; to invest and reinvest the property; to collect, receive, and recover the rents, incomes, and issues from the property; and to expend them as provided by the terms of the devise or gift, or if not so provided, to expend them for the benefit and use of the National Guard as he or she in his or her discretion shall determine, subject to the approval of the Governor. Except as otherwise provided by law, all other money received by the National Guard and derived from any other source shall be remitted to the State Treasurer for credit to the Military Department Cash Fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Military Department 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 1929, c. 189, § 20, p. 662; C.S.1929, § 55-126; R.S.1943, § 55-150; Laws 1965, c. 342, § 1, p. 973; R.R.S.1943, § 55-150; Laws 1969, c. 459, § 29, p. 1591; Laws 1969, c. 584, § 55, p. 2379; Laws 1995, LB 7, § 61; Laws 2006, LB 787, § 9; Laws 2007, LB322, § 9; Laws 2009, First Spec. Sess., LB3, § 31. Effective date November 21, 2009.

Cross References

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

55-133 Adjutant General; armories and equipment; assignment; military emergency vehicles; designation.

(1) The Adjutant General shall assign to each organization an armory and such other equipment as may be necessary to comply with the requirements of United States laws or regulations for National Guard units allotted to the State of Nebraska.

(2)(a) The Adjutant General may designate any publicly owned military vehicles of the National Guard described in subdivision (b) of this subsection as military emergency vehicles. Military emergency vehicles shall be operated as emergency vehicles only when responding to a public disaster, war, riot, invasion, insurrection, or resistance of process or in case of imminent danger of the occurrence of any of such events. The Adjutant General shall develop and enforce standard operating procedures for military emergency vehicles.

(b) Vehicles eligible for designation as military emergency vehicles shall be limited to vehicles assigned to:

(i) The Civil Support Team, or any successor unit; and

(ii) The chemical, biological, radiological, nuclear, and high-yield explosives enhanced response force package, commonly known as the CERFP unit, or any successor unit.

Source: Laws 1929, c. 189, § 21, p. 662; C.S.1929, § 55-127; R.S.1943, § 55-152; Laws 1969, c. 459, § 31, p. 1592; Laws 2008, LB196, § 1.

55-135 National Guard; personnel; number; grade; service.

The number and grade of officers and enlisted personnel shall be as prescribed by the United States Department of the Army and the Department of the Air Force personnel documents provided to the National Guard or as otherwise authorized, but in case of war, invasion, insurrection, riot, or imminent danger, the Governor may temporarily increase them to meet such emergencies. All officers shall hold their commissions until separated by reason of resignation, disability, or pursuant to applicable regulations issued by the Department of the Army or the Department of the Air Force. Vacancies among officers shall be filled by appointment, subject to such regulations relating thereto as now or may hereafter be promulgated by the United States Government.

Source: Laws 1929, c. 189, § 9, p. 659; C.S.1929, § 55-114; Laws 1935, c. 121, § 2, p. 439; C.S.Supp.,1941, § 55-114; R.S.1943, § 55-114; Laws 1945, c. 133, § 2, p. 423; R.R.S.1943, § 55-114; Laws 1969, c. 459, § 33, p. 1593; Laws 1978, LB 570, § 1; Laws 1984, LB 934, § 2; Laws 2010, LB550, § 6.
Effective Date July 15, 2010.

55-139.01 National Guard; peace officer; powers.

While in the active service of the state or on orders under 32 U.S.C., as a member of the militia of this state or another state, by direction or request of the Governor, members of the National Guard are peace officers and conservators of the peace with the power to keep the same, to prevent crime, to arrest any person liable thereto, or to execute process of law. They may call any person to their aid and, when necessary, may summon the power of the state. The authority to perform peace officer duties will be established within the official order to duty and may be limited by the Governor, in writing, as necessitated by the mission.

Source: Laws 2010, LB550, § 7.
Effective date July 15, 2010.

ARTICLE 5

FAMILY MILITARY LEAVE ACT

Section
55-501. Act, how cited.
55-502. Terms, defined.
55-503. Family military leave authorized; conditions.
55-504. Employee exercising right to family military leave; rights; continuation of benefits.
55-505. Loss of certain employee benefits prohibited; act; how construed.
55-506. Employer; actions prohibited.
55-507. Civil action authorized; remedies authorized.

55-501 Act, how cited.

Sections 55-501 to 55-507 shall be known and may be cited as the Family Military Leave Act.

Source: Laws 2007, LB497, § 1.

55-502 Terms, defined.

For purposes of the Family Military Leave Act:

(1) Employee means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in

any employment. Employee does include an independent contractor. Employee includes an employee of a covered employer who has been employed by the same employer for at least twelve months and has been employed for at least one thousand two hundred fifty hours of service during the twelve-month period immediately preceding the commencement of the leave;

(2) Employee benefits means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer;

(3) Employer means (a) any individual, legal representative, partnership, limited liability company, corporation, association, business trust, or other business entity and (b) the State of Nebraska and political subdivisions; and

(4) Family military leave means leave requested by an employee who is the spouse or parent of a person called to military service lasting one hundred seventy-nine days or longer with the state or United States pursuant to the orders of the Governor or the President of the United States.

Source: Laws 2007, LB497, § 2.

55-503 Family military leave authorized; conditions.

(1) Any employer that employs between fifteen and fifty employees shall provide up to fifteen days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(2) An employer that employs more than fifty employees shall provide up to thirty days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(3) The employee shall give at least fourteen days' notice of the intended date upon which the family military leave will commence if leave will consist of five or more consecutive work days. Where able, the employee shall consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. Employees taking family military leave for less than five consecutive days shall give the employer advanced notice as is practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave requested.

Source: Laws 2007, LB497, § 3.

55-504 Employee exercising right to family military leave; rights; continuation of benefits.

(1) Any employee who exercises the right to family military leave under the Family Military Leave Act, upon expiration of the leave, shall be entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. This section does not apply if the employer proves that the employee was not restored because of conditions unrelated to the employee's exercise of rights under the act.

(2) During any family military leave taken under the act, the employer shall make it possible for employees to continue their benefits at the employee's

expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

Source: Laws 2007, LB497, § 4.

55-505 Loss of certain employee benefits prohibited; act; how construed.

(1) Taking family military leave under the Family Military Leave Act shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

(2) Nothing in the act shall be construed to affect an employer's obligation to comply with any collective-bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under the act.

(3) The family military leave rights provided under the act shall not be diminished by any collective-bargaining agreement or employee benefit plan.

(4) Nothing in the act shall be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under the act.

Source: Laws 2007, LB497, § 5.

55-506 Employer; actions prohibited.

(1) An employer shall not interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under the Family Military Leave Act.

(2) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee who exercises any right provided under the act.

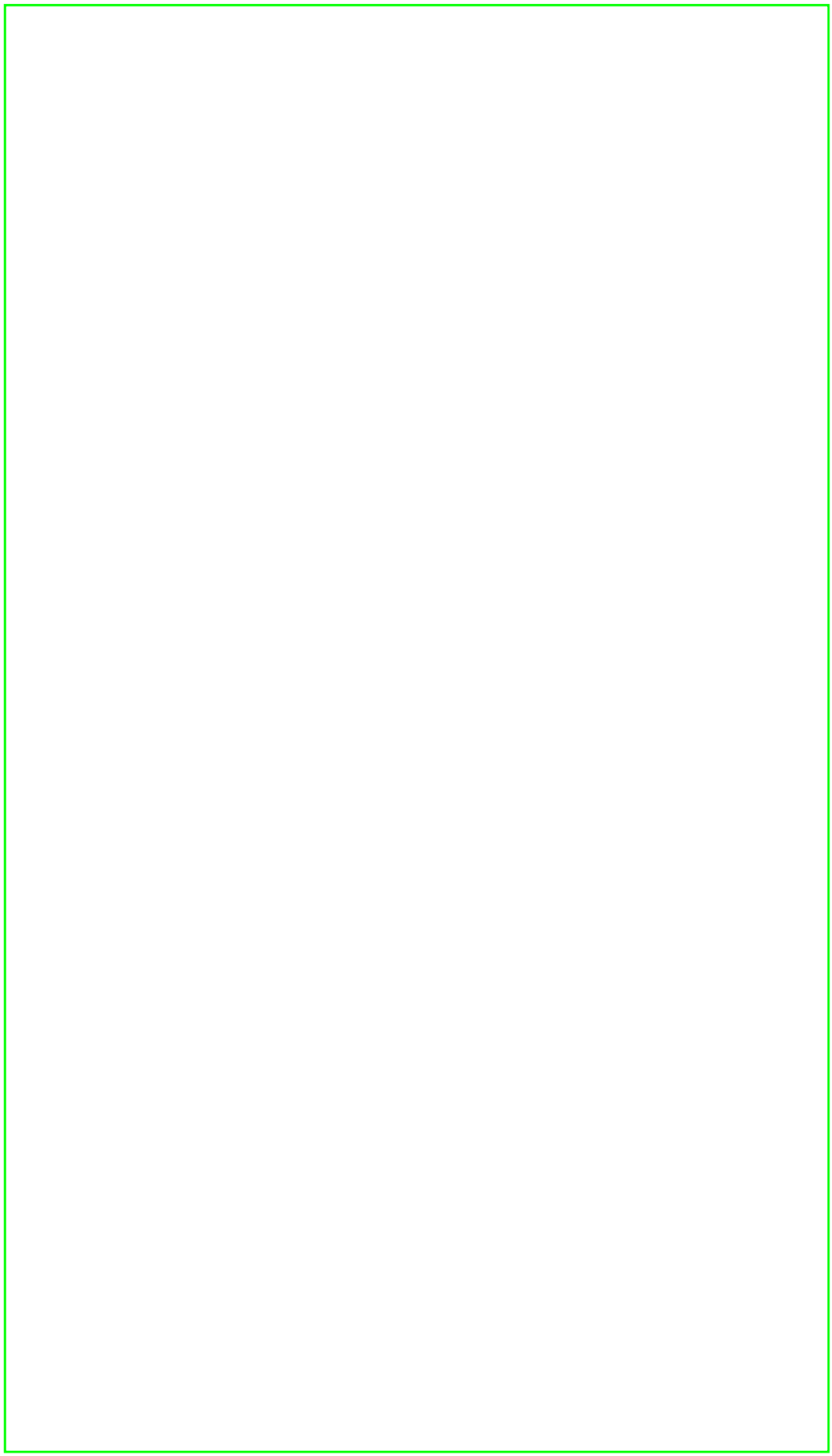
(3) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee for opposing any practice made unlawful by the act.

Source: Laws 2007, LB497, § 6.

55-507 Civil action authorized; remedies authorized.

A civil action may be brought in the district court having jurisdiction by an employee to enforce the Family Military Leave Act. The district court may enjoin any act or practice that violates or may violate the Family Military Leave Act and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce the act.

Source: Laws 2007, LB497, § 7.



CHAPTER 57
MINERALS, OIL, AND GAS

Article.
2. Oil, Gas, and Mineral Interests. 57-239.
5. Liquefied Petroleum Gas. 57-501, 57-517.
7. Oil and Gas Severance Tax. 57-705.
9. Oil and Gas Conservation. 57-919.
13. Natural Gas Utility Service Areas. Transferred.

ARTICLE 2
OIL, GAS, AND MINERAL INTERESTS

Section
57-239. Tax Commissioner; rules and regulations; prescribe forms.

57-239 Tax Commissioner; rules and regulations; prescribe forms.

The Tax Commissioner shall adopt and promulgate rules and regulations necessary for the implementation of sections 57-235 to 57-239. The Tax Commissioner shall also prescribe necessary forms for the implementation of sections 57-235 to 57-239.

Source: Laws 1981, LB 59, § 5; Laws 2000, LB 968, § 19; Laws 2007, LB334, § 8.

ARTICLE 5
LIQUEFIED PETROLEUM GAS

Section
57-501. Terms, defined.
57-517. Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.

57-501 Terms, defined.

As used in sections 57-501 to 57-507, unless the context otherwise requires:

(1) Person means and includes any person, firm, or corporation;

(2) Owner means and includes (a) any person who holds a written bill of sale or other instrument under which title to the container was transferred to such person, (b) any person who holds a paid or receipted invoice showing purchase and payment of such container, (c) any person whose name, initials, mark, or other identifying device has been plainly and legibly stamped or otherwise shown upon the surface of such container for a period of not less than one year prior to the final enactment and approval of sections 57-501 to 57-507, or (d) any manufacturer of a container who has not sold or transferred ownership thereof by written bill of sale or otherwise;

(3) Liquefied petroleum gas means and includes any material which is composed predominantly of hydrocarbons or mixtures of the same, such as propane, propylene, butanes (normal butane and isobutane), and butylenes;

(4) Container means any vessel, including a cylinder or tank, used for storing of liquefied petroleum gas; and

(5) Cylinder means a container constructed in accordance with the United States Department of Transportation specifications in Title 49 of the Code of Federal Regulations as they existed on March 7, 2006.

Source: Laws 1951, c. 188, § 1, p. 695; Laws 2001, LB 137, § 1; Laws 2006, LB 1007, § 3.

57-517 Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.

(1) The Legislature finds it is necessary that a leak check be performed following an interruption of service of a liquefied petroleum gas vapor service system to ensure safe and proper operation. Further, the Legislature finds that a leak check must be performed by a qualified service technician.

(2) It is the intent of the Legislature to create a mechanism that will educate users of liquefied petroleum gas of the requirements for a leak check when an interruption of service occurs.

(3) For purposes of this section:

(a) Interruption of service means the gas supply to a liquefied petroleum gas vapor service system is turned off;

(b) Leak check means an operation performed on a complete liquefied petroleum gas piping system and the connection equipment to verify that the liquefied petroleum gas vapor service system does not leak;

(c) Liquefied petroleum gas provider means any person or entity engaged in the business of supplying, handling, transporting, or selling at retail liquefied petroleum gas in this state; and

(d) Liquefied petroleum gas vapor service system means an installation with a maximum operating pressure of one hundred twenty-five pounds per square inch or less and includes, but is not limited to, the container assembly, pressure regulator or regulators, piping system, gas utilization equipment and components thereof, and venting system in residential, commercial, or institutional installations. Liquefied petroleum gas vapor service system does not include:

(i) Portable liquefied petroleum gas appliances and equipment of all types that are not connected to a fixed-fuel piping system;

(ii) Farm appliances and equipment in liquid service, including, but not limited to, brooders, dehydrators, dryers, and irrigation equipment;

(iii) Liquefied petroleum gas equipment for vaporization, gas mixing, and gas manufacturing;

(iv) Liquefied petroleum gas piping for buildings under construction or renovations that is not to become part of the permanent building piping system, such as temporary fixed piping for building heat; or

(v) Fuel gas system engines, including, but not limited to, tractors, mowers, trucks, and recreational vehicles.

(4) The liquefied petroleum gas provider shall affix a container warning label on each tank supplying liquefied petroleum gas to a liquefied petroleum gas vapor service system. The container warning label shall be affixed near the tank shutoff.

(5) The container warning label required by subsection (4) of this section shall include this warning:

WARNING: Do Not Open Container Shutoff Valve! If this valve is turned off for any reason, the National Fuel Gas Code (NFPA 54) requires a leak check of the system serviced by the container at the time the valve is turned back on. The leak check must be conducted by a qualified service technician. Do Not Attempt To Open The Valve Yourself! Failure to follow this warning may result in the ignition of leaking gas, causing serious and potentially fatal injury, fire, or explosion.

The container warning label shall include the statutory reference to this section.

(6) If the container warning label is affixed near the tank shutoff as required by subsection (4) of this section and the liquefied petroleum gas vapor service system is turned on prior to a leak check by a qualified service technician approved by the liquefied petroleum gas provider, the liquefied petroleum gas provider shall not be liable for any damage, injury, or death if the proximate cause of the damage, injury, or death was the negligence of a person or persons other than the liquefied petroleum gas provider.

Source: Laws 2007, LB274, § 1.

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. Transfers may be made from the Severance Tax Administration Fund to the General Fund at the direction of the Legislature. 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; Laws 2009, First Spec. Sess., LB3, § 32.
Effective date November 21, 2009.

ARTICLE 9

OIL AND GAS CONSERVATION

Section
57-919. Oil and Gas Conservation Fund; investment; charges; exemptions; payment; report of producer; filing; interest; lien; penalties.

57-919 Oil and Gas Conservation Fund; investment; charges; exemptions; payment; report of producer; filing; interest; lien; penalties.

(1) All money collected by the Tax Commissioner or the commission or as civil penalties under sections 57-901 to 57-921 shall be remitted to the State Treasurer for credit to a special fund to be known as the Oil and Gas Conservation Fund. Expenses incident to the administration of such sections shall be paid out of the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Oil and Gas Conservation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) There is hereby levied and assessed on the value at the well of all oil and gas produced, saved, and sold or transported from the premises in Nebraska where produced a charge not to exceed fifteen mills on the dollar. The commission shall by order fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as in its judgment the expenses chargeable against the Oil and Gas Conservation Fund may require, except that the amounts fixed by the commission shall not exceed the limit prescribed in this section. It shall be the duty of the Tax Commissioner to make collection of such assessments. The persons owning an interest, a working interest, a royalty interest, payments out of production, or any other interest in the oil and gas, or in the proceeds thereof, subject to the charge provided for in this section shall be liable to the producer for such charge in proportion to their ownership at the time of production. The producer shall, on or before the last day of the month next succeeding the month in which the charge was assessed, file a report or return in such form as prescribed by the commission and Tax Commissioner together with all charges due. In the event of a sale of oil or gas within this state, the first purchaser shall file this report or return together with any charges then due. If the final filing date falls on a

Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports or returns shall be considered filed on time if postmarked before midnight of the final filing date. Any such charge not paid within the time herein specified shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date of delinquency until paid, and such charge together with the interest shall be a lien as provided in section 57-702. The Tax Commissioner shall charge and collect a penalty for the delinquency in the amount of one percent of the charge for each month or part of the month that the charge has remained delinquent, but in no event shall the penalty be more than twenty-five percent of the charge. The Tax Commissioner may waive all or part of the penalty provided in this section but shall not waive the interest. The person remitting the charge as provided in this section is hereby authorized, empowered, and required to deduct from any amounts due the persons owning an interest in the oil and gas or in the proceeds thereof at the time of production the proportionate amount of such charge before making payment to such persons. This subsection shall apply to all lands in the State of Nebraska, anything in section 57-920 to the contrary notwithstanding, except that there shall be exempted from the charge levied and assessed in this section the following: (a) The interest of the United States of America and the interest of the State of Nebraska and the political subdivisions thereof in any oil or gas or in the proceeds thereof; (b) the interest of any Indian or Indian tribe in any oil or gas or in the proceeds thereof produced from land subject to the supervision of the United States; and (c) oil and gas used in producing operations or for repressuring or recycling purposes. All money so collected shall be remitted to the State Treasurer for credit to the Oil and Gas Conservation Fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of sections 57-901 to 57-921.

Source: Laws 1959, c. 262, § 19, p. 915; Laws 1969, c. 584, § 56, p. 2380; Laws 1973, LB 527, § 1; Laws 1974, LB 804, § 2; Laws 1980, LB 709, § 3; Laws 1981, LB 167, § 33; Laws 1983, LB 224, § 8; Laws 1986, LB 1027, § 198; Laws 1992, Fourth Spec. Sess., LB 1, § 8; Laws 1994, LB 1066, § 44; Laws 1995, LB 407, § 3; Laws 1997, LB 97, § 1; Laws 2009, First Spec. Sess., LB3, § 33. Effective date November 21, 2009.

Cross References

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

ARTICLE 13

NATURAL GAS UTILITY SERVICE AREAS

Section
57-1301. Transferred to section 66-1858.
57-1302. Transferred to section 66-1859.
57-1303. Transferred to section 66-1860.
57-1304. Transferred to section 66-1861.
57-1305. Transferred to section 66-1862.
57-1306. Transferred to section 66-1863.
57-1307. Transferred to section 66-1864.

57-1301 Transferred to section 66-1858

57-1302 Transferred to section 66-1859

57-1303 Transferred to section 66-1860

57-1304 Transferred to section 66-1861

57-1305 Transferred to section 66-1862

57-1306 Transferred to section 66-1863

57-1307 Transferred to section 66-1864

CHAPTER 58
MONEY AND FINANCING

Article.
2. Nebraska Investment Finance Authority. 58-201 to 58-242.
3. Small Business Development. 58-301 to 58-326.
6. Nebraska Uniform Prudent Management of Institutional Funds Act. 58-601 to 58-619.
7. Nebraska Affordable Housing Act. 58-703 to 58-708.

ARTICLE 2
NEBRASKA INVESTMENT FINANCE AUTHORITY

Section
58-201. Act, how cited.
58-202. Cost and availability of financing; legislative findings and declarations.
58-203. Authority; purpose for creation.
58-207. Definitions, where found.
58-210.02. Economic-impact project, defined.
58-219. Project, defined.
58-219.01. Public agency, defined.
58-239.04. Authority; economic-impact projects; powers and duties.
58-242. Authority; agricultural projects; duties.

58-201 Act, how cited.

Sections 58-201 to 58-272 shall be known and may be cited as the Nebraska Investment Finance Authority Act.

Source: Laws 1983, LB 626, § 1; Laws 1986, LB 1230, § 29; Laws 1989, LB 311, § 1; Laws 1989, LB 706, § 1; Laws 1991, LB 253, § 1; Laws 1992, LB 1001, § 2; Laws 1996, LB 1322, § 1; Laws 2002, LB 1211, § 3; Laws 2006, LB 693, § 1.

58-202 Cost and availability of financing; legislative findings and declarations.

(1) The Legislature hereby finds and declares that:

(a) The high cost of agricultural loans and the general unavailability of such loans at favorable rates and terms for farmers, particularly beginning farmers, and other agricultural enterprises have resulted in decreased crop, livestock, and business productivity and prevented farmers and other agricultural enterprises from acquiring modern agricultural equipment and processes. These problems have made it difficult for farmers and other agricultural enterprises to maintain or increase their present number of employees and have decreased the supply of agricultural commodities available to fulfill the needs of the citizens of this state; and

(b) There exists in this state an inadequate supply of and a pressing need for farm credit and agricultural loan financing at interest rates and terms which are consistent with the needs of farmers, particularly beginning farmers, and other agricultural enterprises.

(2) The Legislature hereby finds and declares that:

(a) From time to time the high rates of interest charged by mortgage lenders seriously restrict existing housing transfers and new housing starts and the resultant reduction in residential construction starts causes a condition of substantial unemployment and underemployment in the construction industry;

(b) Such conditions generally result in and contribute to the creation of slums and blighted areas in the urban and rural areas of this state and a deterioration of the quality of living conditions within this state and necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident prevention, and other public services and facilities; and

(c) There exists in the urban and rural areas of this state an inadequate supply of and a pressing need for sanitary, safe, and uncrowded housing at prices at which low-income and moderate-income persons, particularly first-time homebuyers, can afford to purchase, construct, or rent and as a result such persons are forced to occupy unsanitary, unsafe, and overcrowded housing.

(3) The Legislature hereby finds and declares that:

(a) Adequate and reliable energy supplies are a basic necessity of life and sufficient energy supplies are essential to supplying adequate food and shelter;

(b) The cost and availability of energy supplies has been and will continue to be a matter of state and national concern;

(c) The increasing cost and decreasing availability of energy supplies for purposes of residential heating will limit the ability of many of Nebraska's citizens to provide the basic necessities of life and will result in a deterioration in living conditions and a threat to the health and welfare of the citizens of this state;

(d) Energy conservation through building modifications including, but not limited to, insulation, weatherization, and the installation of alternative energy devices has been shown to be a prudent means of reducing energy consumption costs and the need for additional costly facilities to produce and supply energy;

(e) Because of the high cost of available capital, the purchase of energy conservation devices is not possible for many Nebraskans. The prohibitively high interest rates for private capital create a situation in which the necessary capital cannot be obtained solely from private enterprise sources and there is a need for the stimulation of investment of private capital, thereby encouraging the purchase of energy conservation devices and energy conserving building modifications;

(f) The increased cost per capita of supplying adequate life-sustaining energy needs has reduced the amount of funds, both public and private, available for providing other necessities of life, including food, health care, and safe, sanitary housing; and

(g) The continuing purchase of energy supplies results in the transfer of ever-increasing amounts of capital to out-of-state energy suppliers.

(4) The Legislature hereby finds and declares that:

(a) There exist within this state unemployment and underemployment especially in areas of basic economic activity, caused by economic decline and need for diversification of the economic base, needlessly increasing public expendi-

tures for unemployment compensation and welfare, decreasing the tax base, reducing tax revenue, and resulting in economic and social liabilities to the entire state;

(b) Such unemployment and underemployment cause areas of the state to deteriorate and become substandard and blighted and such conditions result in making such areas economic or social liabilities harmful to the economic and social well-being of the entire state and the communities in which they exist, needlessly increasing public expenditures, imposing onerous state and municipal burdens, decreasing the tax base, reducing tax revenue, substantially impairing or arresting the sound growth of the state and the municipalities, depreciating general state and community-wide values, and contributing to the spread of disease and crime which necessitate excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, and punishment, for the treatment of juvenile delinquency, for the maintenance of adequate police, fire, and accident protection, and for other public services and facilities;

(c) There exist within this state conditions resulting from the concentration of population of various counties, cities, and villages which require the construction, maintenance, and operation of adequate hospital and nursing facilities for the care of the public health. Since these conditions cannot be remedied by the ordinary operations of private enterprises and since provision of adequate hospital, nursing, and medical care is a public use, it is in the public interest that adequate hospital and medical facilities and care be provided in order to care for and protect the public health and welfare;

(d) Creation of basic economic jobs in the private sector and the promotion of health and welfare by the means provided under the Nebraska Investment Finance Authority Act and the resulting reduction of needless public expenditures, expansion of the tax base, provision of hospitals and health care and related facilities, and increase of tax revenue are needed within this state; and

(e) Stimulation of economic development throughout the state and the provision of health care at affordable prices are matters of state policy, public interest, and statewide concern and within the powers and authority inherent in and reserved to the state in order that the state and its municipalities shall not continue to be endangered by areas which consume an excessive proportion of their revenue, in order that the economic base of the state may be broadened and stabilized thereby providing jobs and necessary tax base, and in order that adequate health care services be provided to all residents of this state.

(5) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist municipalities, as defined in section 81-15,149, in providing wastewater treatment facilities and safe drinking water facilities. The federal funding provided for wastewater treatment facilities is extremely limited while the need to provide and improve wastewater treatment facilities and safe drinking water facilities is great;

(b) The construction, development, rehabilitation, and improvement of modern and efficient sewer systems and wastewater treatment facilities are essential to protecting and improving the state's water quality, the provision of adequate wastewater treatment facilities and safe drinking water facilities is essential to economic growth and development, and new sources of financing for such projects are needed;

(c) The federal government has acted to end the system of federal construction grants for clean water projects and has instead provided for capitalization grants to capitalize state revolving funds for wastewater treatment projects and will soon expand that to include safe drinking water facilities, and the state has created or is expected to create appropriate funds or accounts for such purpose. The state is required or expected to be required to provide matching funds for deposit into such funds or accounts, and there is a need for financing in excess of the amount which can be provided by the federal money and the state match; and

(d) Additional assistance can be provided to municipalities as defined in section 81-15,149 to alleviate the problems of water pollution or the provision of safe drinking water by providing for the issuance of revenue bonds, the proceeds of which shall be deposited into the Wastewater Treatment Facilities Construction Loan Fund or the comparable state fund to finance safe drinking water facilities. Nothing in this section shall prohibit the provision of loans, including loans made pursuant to the Conservation Corporation Act, to a municipality as defined in section 81-15,149 for the construction, development, rehabilitation, operation, maintenance, and improvement of wastewater treatment facilities or safe drinking water facilities.

(6) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist public school boards and school districts and private for-profit or not-for-profit schools in connection with removal of materials determined to be hazardous to the health and well-being of the residents of the state and the reduction or elimination of accessibility barriers and that the federal funding provided for such projects is extremely limited and the need and requirement to remove such materials and to reduce or eliminate accessibility barriers from school buildings is great;

(b) The financing of the removal of such environmental hazards and the reduction or elimination of accessibility barriers is essential to protecting and improving the facilities in the state which provide educational benefits and services;

(c) The federal government has directed schools to remove such hazardous materials and to reduce or eliminate accessibility barriers; and

(d) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and assist in the financing of the removal of environmental hazards and the reduction or elimination of accessibility barriers in educational facilities in this state in order to provide for a clean, safe, and accessible environment to protect the health and welfare of the citizens and residents of this state.

(7) The Legislature hereby finds and declares that:

(a) The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the ground water supply. In addition, the nature of the waste and the disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition;

(b) Wastes filling Nebraska's landfills may at best represent a potential resource, but without proper management wastes are hazards to the environment and to the public health and welfare;

(c) The growing concern with ground water protection and the desire to avoid financial risks inherent in ground water contamination have caused many smaller landfills to close in favor of using higher-volume facilities. Larger operations allow for better ground water protection at a relatively lower and more manageable cost;

(d) The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to landfills and increase the supply of reusable materials for the use of the public;

(e) There is a need within this state for financing to assist counties, cities, villages, entities created under the Interlocal Cooperation Act and the Joint Public Agency Act, and private persons with the construction and operation of new solid waste disposal areas or facilities and with the closure, monitoring, and remediation of existing solid waste disposal areas and facilities;

(f) Financing the construction and operation of new solid waste disposal areas and facilities and financing the closure, monitoring, and remediation of existing and former solid waste disposal areas and facilities in the state is essential to protect the environment and the public health and welfare;

(g) The federal government has directed that effective October 1, 1993, all solid waste disposal areas and facilities shall be upgraded to meet stringent siting, design, construction, operation, closure, monitoring, and remediation requirements; and

(h) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and to assist in the financing of solid waste disposal areas and facilities and in the removal of environmental hazards in solid waste disposal areas and facilities in this state in order to provide for a clean environment to protect the health and welfare of the citizens and residents of this state.

(8) The Legislature hereby finds and declares that:

(a) During emergencies the resources of political subdivisions must be effectively directed and coordinated to public safety agencies to save lives, to protect property, and to meet the needs of citizens;

(b) There exists a need for public safety communication systems for use by Nebraska's public safety agencies as defined in the Nebraska Public Safety Communication System Act;

(c) Investment in the public safety communication infrastructure is required to ensure the effectiveness of such public safety agencies. Since the maintenance of public safety is a paramount concern but the cost of purchasing and operating multiple communication infrastructures is prohibitive, it is imperative that political subdivisions cooperate in their efforts to obtain real and personal property to establish, operate, maintain, and manage public safety communication systems; and

(d) There is a need within this state for financing to assist political subdivisions and any entities created under the Interlocal Cooperation Act and the

Joint Public Agency Act with the acquisition, construction, and operation of real and personal property of public safety communication systems.

(9) The Legislature hereby finds and declares that, as of May 27, 2005, and in connection with the financing of agricultural projects, there is a need to increase both the limit on individual net worth and the limit on the aggregate loan amount that may be provided by the authority. Such adjustments are necessary to address the inadequate supply of and pressing need for farm credit and agricultural loan financing at interest rates and terms that are consistent with the needs of farmers, particularly beginning farmers, and other agricultural enterprises.

(10) The Legislature hereby finds and declares that:

(a) The amount of funding and other resources available to remedy the problems identified in this section has been, and continues to be, insufficient. Accordingly, the authority must be provided with additional powers to adequately address the problems identified in this section with funding derived from public and private sources and state and federal sources;

(b) Carrying out the purposes of the Nebraska Investment Finance Authority Act may necessitate innovative agreements with public agencies and private entities and it is the policy of this state to encourage such public-private and intergovernmental cooperation; and

(c) Better, more broad-based sources of financing must be made available to the authority and by the authority to the private sector of the economy to enable the authority to address the problems identified in this section.

Source: Laws 1983, LB 626, § 2; Laws 1989, LB 706, § 2; Laws 1989, LB 311, § 2; Laws 1991, LB 253, § 2; Laws 1992, LB 1001, § 3; Laws 1992, LB 1257, § 67; Laws 1996, LB 1322, § 2; Laws 1999, LB 87, § 77; Laws 2002, LB 1211, § 4; Laws 2005, LB 90, § 16; Laws 2005, LB 343, § 1; Laws 2006, LB 693, § 2.

Cross References

Conservation Corporation Act, see section 2-4201.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Public Safety Communication System Act, see section 86-401.

58-203 Authority; purpose for creation.

(1) The problems enumerated in section 58-202 cannot alone be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the creation of a quasi-governmental body to:

(a) Encourage the investment of private capital and stimulate the construction of sanitary, safe, and uncrowded housing for low-income and moderate-income persons, particularly first-time homebuyers, through the use of public financing as provided by the Nebraska Investment Finance Authority Act at reasonable interest rates and by coordinating and cooperating with private industry and local communities which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(b) Encourage the investment of private capital to provide financing for farmers, particularly beginning farmers, and other agricultural enterprises of usual and customary size for such farming operations within the community at interest rates lower than those available in conventional farm credit markets

which is essential to alleviating the conditions described in section 58-202 and is in the public interest;

(c) Encourage the investment of private capital and stimulate the creation of basic economic activity, the creation of jobs, the provision of adequate health care, and the expansion of the tax base throughout the state through the use of public financing and by coordinating with private industry and local communities which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(d) Encourage the investment of private capital and assist in the construction, development, rehabilitation, and improvement of wastewater treatment facilities and safe drinking water facilities in this state to provide for clean water to protect the health and welfare of the citizens and residents of this state and promote economic well-being which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(e) Encourage the investment of private capital and assist schools through the use of public financing in the abatement of environmental hazards and the reduction and elimination of accessibility barriers in their school buildings or on their school grounds in order to protect the health and welfare of the citizens and residents of this state and promote economic well-being which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(f) Encourage the investment of private capital and assist in financing the construction and operation of new solid waste disposal areas and facilities and the closure, monitoring, and remediation of former and existing solid waste disposal areas and facilities;

(g) Encourage the investment of private capital and stimulate the construction and operation of any public safety communication project through the use of public financing as provided by the act at reasonable interest rates which is essential to addressing the needs described in section 58-202 and is in the public interest; and

(h) Encourage cooperation with public agencies and the use of entrepreneurial methods and approaches to better access federal, state, and local government resources and to stimulate more private sector initiatives and joint public-private initiatives to carry out the purposes of the Nebraska Investment Finance Authority Act.

(2) Alleviating the conditions and problems enumerated in section 58-202 through encouragement of private investment by a quasi-governmental body is a public purpose and use for which public money provided by the sale of bonds may be borrowed, expended, advanced, loaned, or granted. Such activities shall not be conducted for profit. Such activities are proper governmental functions and can best be accomplished by the creation of a quasi-governmental body vested with the powers and duties specified in the Nebraska Investment Finance Authority Act. The necessity for the provisions of the act to protect the health, safety, morals, and general welfare of all the people of this state is hereby declared to be a matter of legislative determination. The quasi-governmental body created by the act shall make financing available for new or existing housing to serve those people, particularly first-time homebuyers, whom private industry is unable to serve at current interest rates, shall make financing available for farmers, particularly beginning farmers, shall make financing available for the construction, development, rehabilitation, and im-

provement of wastewater treatment facilities or safe drinking water facilities and for the construction, operation, closure, monitoring, and remediation of solid waste disposal areas and facilities in this state, shall make financing available to schools for the abatement of environmental hazards and the reduction and elimination of accessibility barriers, and shall make financing available for public safety communication projects in this state.

Source: Laws 1983, LB 626, § 3; Laws 1989, LB 311, § 3; Laws 1991, LB 253, § 3; Laws 1992, LB 1001, § 4; Laws 1992, LB 1257, § 68; Laws 1996, LB 1322, § 3; Laws 2002, LB 1211, § 5; Laws 2006, LB 693, § 3.

58-207 Definitions, where found.

For purposes of the Nebraska Investment Finance Authority Act, unless the context otherwise requires, the definitions found in sections 58-207.01 to 58-225 shall be used.

Source: Laws 1983, LB 626, § 7; Laws 1984, LB 1084, § 3; Laws 1989, LB 706, § 3; Laws 1991, LB 253, § 7; Laws 1992, LB 1001, § 5; Laws 1996, LB 1322, § 4; Laws 2006, LB 693, § 4.

58-210.02 Economic-impact project, defined.

(1) Economic-impact project means any of the following, whether or not in existence, financed in whole or in part through the use of the federal new markets tax credit described in section 45D of the Internal Revenue Code, and located in a low-income community designated pursuant to section 45D of the Internal Revenue Code or designated by the Department of Economic Development:

(a) Any land, building, or other improvement, including, but not limited to, infrastructure;

(b) Any real or personal property;

(c) Any equipment; and

(d) Any undivided or other interest in any property described in subdivision (a), (b), or (c) of this subsection.

(2) Economic-impact project does not include any operating capital.

Source: Laws 2006, LB 693, § 5.

58-219 Project, defined.

Project shall mean one or more of the following:

(1)(a) Rental housing;

(b) Residential housing; and

(c) Residential energy conservation devices;

(2) Agriculture or agricultural enterprise;

(3) Any land, building, or other improvement, any real or personal property, or any equipment and any undivided or other interest in any of the foregoing, whether or not in existence, suitable or used for or in connection with any of the following revenue-producing enterprises or two or more such enterprises engaged or to be engaged in:

(a) In all areas of the state, manufacturing or industrial enterprises, including assembling, fabricating, mixing, processing, warehousing, distributing, or transporting any products of agriculture, forestry, mining, industry, or manufacturing; pollution control facilities; and facilities incident to the development of industrial sites, including land costs and the costs of site improvements such as drainage, water, storm, and sanitary sewers, grading, streets, and other facilities and structures incidental to the use of such sites for manufacturing or industrial enterprises;

(b) In all areas of the state, service enterprises if (i) such facilities constitute new construction or rehabilitation, including hotels or motels, sports and recreation facilities available for use by members of the general public either as participants or spectators, and convention or trade show facilities, (ii) such facilities do not or will not derive a significant portion of their gross receipts from retail sales or utilize a significant portion of their total area for retail sales, and (iii) such facilities are owned or to be owned by a nonprofit entity;

(c) In blighted areas of the state, service and business enterprises if such facilities constitute new construction, acquisition, or rehabilitation, including, but not limited to, those enterprises specified in subdivision (3)(b) of this section, office buildings, and retail businesses if such facilities are owned or to be owned by a nonprofit entity; and

(d) In all areas of the state, any land, building, or other improvement and all real or personal property, including furniture and equipment, and any undivided or other interest in any such property, whether or not in existence, suitable or used for or in connection with any hospital, nursing home, and facilities related and subordinate thereto.

Nothing in this subdivision shall be construed to include any rental or residential housing, residential energy conservation device, or agriculture or agricultural enterprise;

(4) Any land, building, or other improvement, any real or personal property, or any equipment and any undivided or other interest in any of the foregoing, whether or not in existence, used by a nonprofit entity as an office building, but only if (a) the principal long-term occupant or occupants thereof initially employ at least fifty people, (b) the office building will be used by the principal long-term occupant or occupants as a national, regional, or divisional office, (c) the principal long-term occupant or occupants are engaged in a multistate operation, and (d) the authority makes the findings specified in subdivision (1) of section 58-251;

(5) Wastewater treatment or safe drinking water project which shall include any project or undertaking which involves the construction, development, rehabilitation, and improvement of wastewater treatment facilities or safe drinking water facilities and is financed by a loan from or otherwise provided financial assistance by the Wastewater Treatment Facilities Construction Loan Fund or any comparable state fund providing money for the financing of safe drinking water facilities;

(6) Any cost necessary for abatement of an environmental hazard or hazards in school buildings or on school grounds upon a determination by the school that an actual or potential environmental hazard exists in the school buildings or on the school grounds under its control;

(7) Any accessibility barrier elimination project costs necessary for accessibility barrier elimination in school buildings or on school grounds upon a

determination by the school that an actual or potential accessibility barrier exists in the school buildings or on the school grounds under its control;

(8) Solid waste disposal project which shall include land, buildings, equipment, and improvements consisting of all or part of an area or a facility for the disposal of solid waste, including recycling of waste materials, either publicly or privately owned or operated, and any project or program undertaken by a county, city, village, or entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act for closure, monitoring, or remediation of an existing solid waste disposal area or facility and any undivided or other interest in any of the foregoing;

(9) Any affordable housing infrastructure which shall include streets, sewers, storm drains, water, electrical and other utilities, sidewalks, public parks, public playgrounds, public swimming pools, public recreational facilities, and other community facilities, easements, and similar use rights thereof, as well as improvements preparatory to the development of housing units;

(10) Any public safety communication project, including land, buildings, equipment, easements, licenses, and leasehold interests, and any undivided or other interest in any of the foregoing, held for or on behalf of any public safety communication system owned or operated by (a) a joint entity providing public safety communications and created pursuant to the Interlocal Cooperation Act or (b) a joint public agency providing public safety communications and created pursuant to the Joint Public Agency Act; and

(11) Economic-impact projects.

Source: Laws 1983, LB 626, § 19; Laws 1984, LB 1084, § 5; Laws 1984, LB 372, § 10; Laws 1989, LB 311, § 5; Laws 1989, LB 706, § 7; Laws 1991, LB 253, § 22; Laws 1992, LB 1001, § 9; Laws 1992, LB 1257, § 69; Laws 1996, LB 1322, § 6; Laws 1999, LB 87, § 78; Laws 2002, LB 1211, § 6; Laws 2006, LB 693, § 6.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

58-219.01 Public agency, defined.

Public agency means any:

(1) County, city, or village; school, drainage, tax, improvement, or other district; local or regional housing agency; department, division, or political subdivision of this state or another state; housing agency or housing trust of this state or another state; and other agency, bureau, office, authority, or instrumentality of this state or another state;

(2) Board, agency, commission, division, or other instrumentality of a city, village, or county; and

(3) Board, commission, agency, department, or other instrumentality of the United States, or any political subdivision or governmental unit thereof, and in each case, any affiliates thereof.

Source: Laws 2006, LB 693, § 7.

58-239.04 Authority; economic-impact projects; powers and duties.

(1) In addition to the powers granted under section 58-239, the authority may:

(a) Borrow money and issue bonds for the purpose of financing economic-impact projects;

(b) Enter into and perform interagency and intergovernmental agreements with one or more public agencies in connection with financing or providing resources for economic-impact projects;

(c) Create, operate, manage, invest in, and own entities or other consortia created for the purpose of facilitating economic-impact projects; and

(d) Provide resources for economic-impact projects, in an amount not to exceed ten million dollars per project, including, but not limited to, making loans or providing equity through investment therein or ownership thereof or through other means or agreements.

(2) The authority may exercise any of the powers authorized by this section only after a public hearing has been held detailing the economic-impact project to be assisted and allowing for input from the public. Notice of the public hearing shall be given at least two weeks in advance of the hearing in a newspaper of general circulation within the county affected by the economic-impact project, which notice shall give a general designation of the project and identify where more detailed plans may be reviewed prior to the hearing.

Source: Laws 2006, LB 693, § 8.

58-242 Authority; agricultural projects; duties.

Prior to exercising any of the powers authorized by the Nebraska Investment Finance Authority Act regarding agricultural projects as defined in subdivision (2) of section 58-219, the authority shall require:

(1) That no loan will be made to any person with a net worth of more than five hundred thousand dollars;

(2) That the lender certify and agree that it will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase loans to provide agricultural enterprises or, if such lender has made a commitment to make loans to provide agricultural enterprises on the basis of a commitment from the authority to purchase such loans, such lender will make such loans and sell the same to the authority within a reasonable period of time;

(3) That the lender certify that the borrower is an individual who is actively engaged in or who will become actively engaged in an agricultural enterprise after he or she receives the loan or that the borrower is a firm, partnership, limited liability company, corporation, or other entity with all owners, partners, members, or stockholders thereof being natural persons who are actively engaged in or who will be actively engaged in an agricultural enterprise after the loan is received;

(4) That the aggregate amount of the loan received by a borrower shall not exceed five hundred thousand dollars. In computing such amount a loan received by an individual shall be aggregated with those loans received by his or her spouse and children and a loan received by a firm, partnership, limited liability company, or corporation shall be aggregated with those loans received by each owner, partner, member, or stockholder thereof; and

(5) That the recipient of the loan be identified in the minutes of the authority prior to or at the time of adoption by the authority of the resolution authorizing the issuance of the bonds which will provide for financing of the loan.

Source: Laws 1983, LB 626, § 42; Laws 1991, LB 253, § 43; Laws 1993, LB 121, § 356; Laws 2005, LB 90, § 17.

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.

(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.

ARTICLE 6

NEBRASKA UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

Section

Section
58-611. Definitions.
58-612. Standard of conduct in managing and investing institutional fund.
58-613. Appropriation for expenditure or accumulation of endowment fund; rules of construction.
58-614. Delegation of management and investment functions.
58-615. Release or modification of restrictions on management, investment, or purpose.
58-616. Reviewing compliance.
58-617. Application to existing institutional funds.
58-618. Relation to Electronic Signatures in Global and National Commerce Act.
58-619. Uniformity of application and construction.

58-601 Repealed. Laws 2007, LB 136, § 11.

58-602 Repealed. Laws 2007, LB 136, § 11.

58-603 Repealed. Laws 2007, LB 136, § 11.

58-604 Repealed. Laws 2007, LB 136, § 11.

58-605 Repealed. Laws 2007, LB 136, § 11.

58-606 Repealed. Laws 2007, LB 136, § 11.

58-607 Repealed. Laws 2007, LB 136, § 11.

58-608 Repealed. Laws 2007, LB 136, § 11.

58-609 Repealed. Laws 2007, LB 136, § 11.

58-610 Act, how cited.

Sections 58-610 to 58-619 shall be known and be cited as the Nebraska Uniform Prudent Management of Institutional Funds Act.

Source: Laws 2007, LB136, § 1.

58-611 Definitions.

For purposes of the Nebraska Uniform Prudent Management of Institutional Funds Act:

(1) Charitable purpose means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) Endowment fund means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) Gift instrument means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) Institution means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) Institutional fund means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) program-related assets;

(B) a fund held for an institution by a trustee that is not an institution; or

(C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) Program-related asset means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Source: Laws 2007, LB136, § 2.

58-612 Standard of conduct in managing and investing institutional fund.

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of the act.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Source: Laws 2007, LB136, § 3.

58-613 Appropriation for expenditure or accumulation of endowment fund; rules of construction.

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) the duration and preservation of the endowment fund;

(2) the purposes of the institution and the endowment fund;

(3) general economic conditions;

(4) the possible effect of inflation or deflation;

(5) the expected total return from income and the appreciation of investments;

(6) other resources of the institution; and

(7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only income, interest, dividends, or rents, issues, or profits, or to preserve the principal intact, or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

Source: Laws 2007, LB136, § 4.

58-614 Delegation of management and investment functions.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than the Nebraska Uniform Prudent Management of Institutional Funds Act.

Source: Laws 2007, LB136, § 5.

58-615 Release or modification of restrictions on management, investment, or purpose.

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impractical, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(1) the institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars;

(2) more than twenty years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

Source: Laws 2007, LB136, § 6.

58-616 Reviewing compliance.

Compliance with the Nebraska Uniform Prudent Management of Institutional Funds Act is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

Source: Laws 2007, LB136, § 7.

58-617 Application to existing institutional funds.

The Nebraska Uniform Prudent Management of Institutional Funds Act applies to institutional funds existing on or established after September 1, 2007. As applied to institutional funds existing on September 1, 2007, the act governs only decisions made or actions taken on or after that date.

Source: Laws 2007, LB136, § 8.

58-618 Relation to Electronic Signatures in Global and National Commerce Act.

The Nebraska Uniform Prudent Management of Institutional Funds Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on September 1, 2007, but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

Source: Laws 2007, LB136, § 9.

58-619 Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2007, LB136, § 10.

ARTICLE 7

NEBRASKA AFFORDABLE HOUSING ACT

Section
58-703. Affordable Housing Trust Fund; created; use.
58-706. Affordable Housing Trust Fund; eligible activities.
58-708. Department of Economic Development; selection of projects to receive assistance; duties.

58-703 Affordable Housing Trust Fund; created; use.

The Affordable Housing Trust Fund is created. The fund shall receive money pursuant to sections 8-1120 and 76-903 and may include revenue from sources recommended by the housing advisory committee established in section 58-704, appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources, except that before appropriations from the General Fund may be used as a revenue source for the Affordable Housing Trust Fund or for administrative costs of the Department of Economic Development in administering the fund, such use must be specifically authorized by a separate legislative bill passed in a legislative session subsequent to the Ninety-fourth Legislature, Second Session, 1996. Any initial appropriation from the General Fund which is used as a revenue source for the Affordable Housing Trust Fund or for administrative costs shall be in an appropriations bill which does not contain appropriations for other programs. The department as part of its comprehensive housing affordability strategy shall administer the Affordable Housing Trust Fund.

Transfers may be made from the Affordable Housing Trust Fund to the General Fund and the Behavioral Health Services Fund at the direction of the Legislature. The State Treasurer shall make transfers from the Affordable Housing Trust Fund to the General Fund according to the following schedule: (1) $1,500,000 on or after July 1, 2005, but no later than July 10, 2005; and (2) $1,500,000 on or after July 1, 2006, but no later than July 10, 2006. The State Treasurer shall transfer $2,000,000 from the Affordable Housing Trust Fund to the Behavioral Health Services Fund on or after July 1, 2005, but not later than July 10, 2005.

Source: Laws 1996, LB 1322, § 13; Laws 1997, LB 864, § 9; Laws 2004, LB 1083, § 100; Laws 2005, LB 40, § 1.

58-706 Affordable Housing Trust Fund; eligible activities.

The following activities are eligible for assistance from the Affordable Housing Trust Fund:

(1) New construction, rehabilitation, or acquisition of housing to assist low-income and very low-income families;

(2) Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;

(3) Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;

(4) Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;

(5) Mortgage insurance guarantees for eligible projects;

(6) Acquisition of housing units for the purpose of preservation of housing to assist low-income or very low-income families;

(7) Projects making affordable housing more accessible to families with elderly members or members who have disabilities;

(8) Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the department, a shortage of affordable housing exists;

(9) Infrastructure projects necessary for the development of affordable housing;

(10) Downpayment and closing cost assistance; and

(11) Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward:

(a) Preparing potential home buyers to purchase affordable housing and postpurchase education;

(b) Target audiences eligible to utilize the services of housing assistance groups or organizations; and

(c) Developers interested in the rehabilitation, acquisition, or construction of affordable housing.

Source: Laws 1996, LB 1322, § 16; Laws 2004, LB 1083, § 101; Laws 2005, LB 40, § 2.

58-708 Department of Economic Development; selection of projects to receive assistance; duties.

(1) During each calendar year in which funds are available from the Affordable Housing Trust Fund for use by the Department of Economic Development, the department shall allocate a specific amount of funds, not less than twenty-five percent, to each congressional district. Entitlement area funds allocated under this section that are not awarded to an eligible project from within the entitlement area within one year shall be made available for distribution to eligible projects elsewhere in the state. The department shall announce a grant and loan application period of at least ninety days duration for all nonentitlement areas. In selecting projects to receive trust fund assistance, the depart-

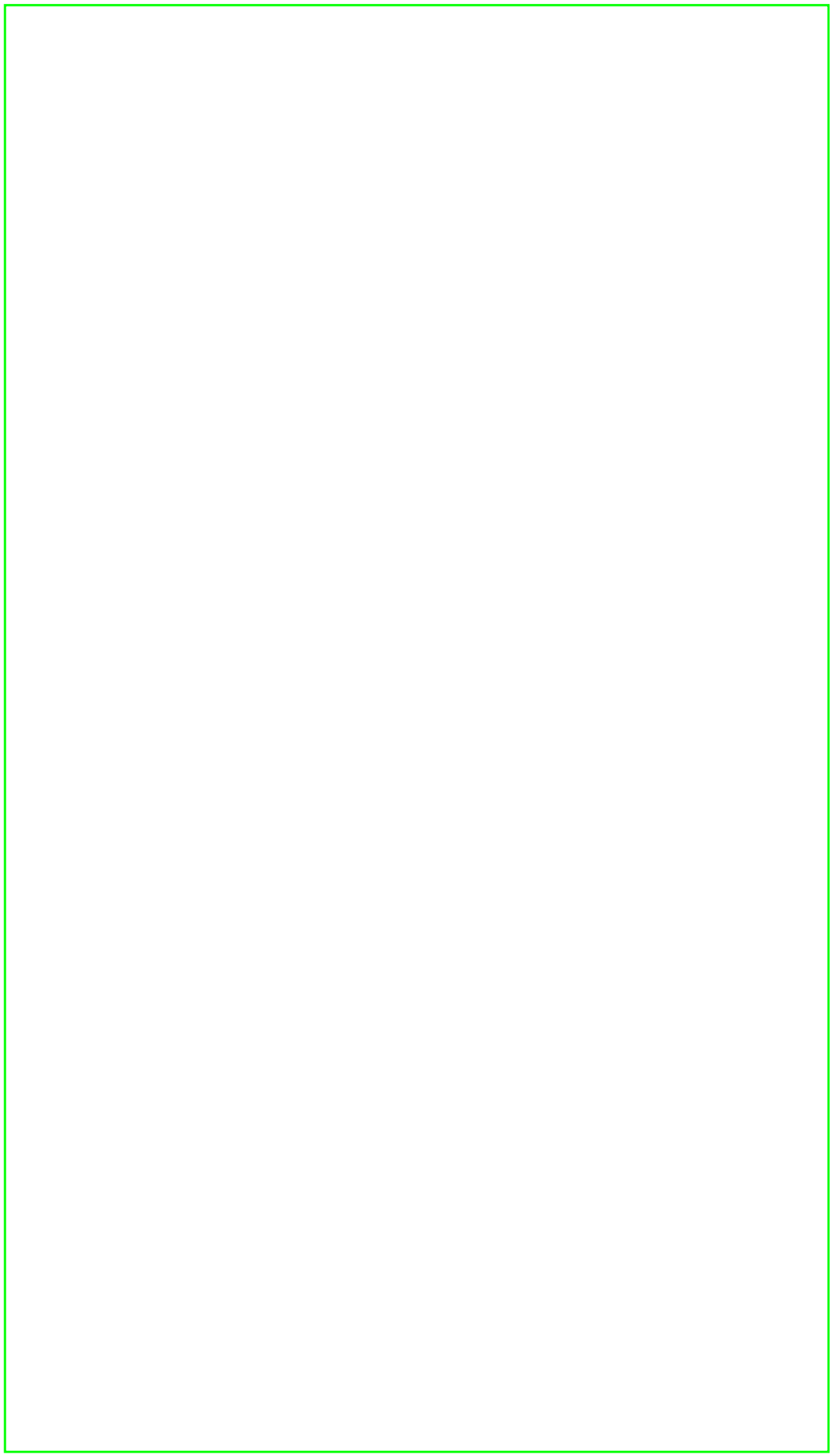
ment shall develop a qualified allocation plan and give first priority to financially viable projects that serve the lowest income occupants for the longest period of time. The qualified allocation plan shall:

(a) Set forth selection criteria to be used to determine housing priorities of the housing trust fund which are appropriate to local conditions, including the community's immediate need for affordable housing, proposed increases in home ownership, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund; and

(b) Give first priority in allocating trust fund assistance among selected projects to those projects which serve the lowest income occupant and are obligated to serve qualified occupants for the longest period of time.

(2) The department shall fund in order of priority as many applications as will utilize available funds less actual administrative costs of the department in administering the program. In administering the program the department may contract for services or directly provide funds to other governmental entities or instrumentalities.

Source: Laws 1996, LB 1322, § 18; Laws 2005, LB 40, § 3.



CHAPTER 59
MONOPOLIES AND UNLAWFUL COMBINATIONS

ARTICLE 15
CIGARETTE SALES

(a) UNFAIR CIGARETTE SALES ACT

(a) UNFAIR CIGARETTE SALES ACT

59-1502 Terms, defined.

As used in the Unfair Cigarette Sales Act, unless the context otherwise requires:

(1) Person shall mean and include any individual, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, or conservator;

(2) Cigarettes shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco;

(3) Sale shall mean any transfer for a consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means whatsoever;

(4) Wholesaler shall include any person who:

(a) Purchases cigarettes directly from the manufacturer;

(b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only; or

(c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing in the Unfair Cigarette Sales Act shall prevent a person from qualifying in different capacities as both a wholesaler and retailer under the applicable provisions of the act;

(5) Retailer shall mean and include any person who operates a store, stand, booth, or concession for the purpose of making sales of cigarettes at retail, including sales through vending machines;

(6) Sell at retail, sale at retail, and retail sales shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use, including sales through vending machines;

(7) Sell at wholesale, sale at wholesale, and wholesale sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale;

(8) Basic cost of cigarettes shall mean the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, without subtracting any discounts, to which shall be added the full value of any stamps which may be required by any cigarette tax act of this state and by ordinance of any municipality of this state in effect or hereafter enacted, if not already included by the manufacturer in his or her list price;

(9) Division shall mean the cigarette tax division of the Tax Commissioner; and

(10) Business day shall mean any day other than a Sunday or legal holiday.

Source: Laws 1965, c. 364, § 2, p. 1184; Laws 1967, c. 378, § 1, p. 1187; Laws 1987, LB 730, § 26; Laws 1993, LB 121, § 377; Laws 2008, LB898, § 1.

Cross References

For cigarette tax, see Chapter 77, article 26.

59-1505 Sale of cigarettes; cost to wholesaler; filing with division.

(1) Cost to the wholesaler shall mean the basic cost of cigarettes to the wholesaler plus the cost of doing business by the wholesaler, as evidenced by the standards and methods of accounting regularly employed by him or her in his or her allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.

(2) In the absence of the filing with the division of satisfactory proof of a lesser or higher cost of doing business by the wholesaler making the sale, the cost of doing business by the wholesaler shall be presumed to be four and three-quarters percent of the basic cost of cigarettes to the wholesaler.

Source: Laws 1965, c. 364, § 5, p. 1188; Laws 2008, LB898, § 2.

ARTICLE 16

CONSUMER PROTECTION ACT

Section
59-1608.02. Repealed. Laws 2006, LB 1061, § 29.
59-1608.03. Recovery under act; Attorney General; duties.
59-1608.04. State Settlement Cash Fund; created; use; investment.
59-1608.05. State Settlement Trust Fund; created; use; investment.
59-1623. Act, how cited.

59-1608.02 Repealed. Laws 2006, LB 1061, § 29.

59-1608.03 Recovery under act; Attorney General; duties.

When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under the Consumer Protection Act, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment, except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under the act shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended;

(2) When the Attorney General makes recovery pursuant to the act on behalf of a state agency or political subdivision of any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended;

(3) Except as otherwise provided by law, the State Settlement Cash Fund shall consist of all recoveries received pursuant to the act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments; and

(4) Except as otherwise provided by law, the State Settlement Trust Fund shall consist of all recoveries received pursuant to the act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General, but to include only those funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments.

Source: Laws 2006, LB 1061, § 3.

59-1608.04 State Settlement Cash Fund; created; use; investment.

The State Settlement Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securi-

ties, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. All money in the fund shall be subject to legislative review and shall be appropriated and expended for any allowable legal purposes as determined by the Legislature. The fund shall only be appropriated to a separate and distinct budget program and such appropriations shall only be expended from a separate and distinct budget subprogram and shall not be commingled with any other revenue or expenditure. Transfers may be made from the fund to the General Fund and the State DNA Sample and Data Base Fund at the direction of the Legislature. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other separate sources credited to the State Settlement Cash Fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2006, LB 1061, § 4; Laws 2009, First Spec. Sess., LB3, § 34; Laws 2010, LB190, § 7.
Effective date July 15, 2010.

Cross References

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

59-1608.05 State Settlement Trust Fund; created; use; investment.

The State Settlement Trust Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General, but to include only those funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. All money in the State Settlement Trust Fund shall be subject to legislative review, but shall not be subject to legislative appropriation. The fund shall be expended consistent with any legal restrictions placed on the funds. The fund shall be paid from the same budget program used to record revenue and expenditures of the State Settlement Cash Fund, except that the fund shall only be expended from a separate and distinct budget subprogram and shall not be commingled with any other revenue or expenditure. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other

separate sources credited to the fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2006, LB 1061, § 5.

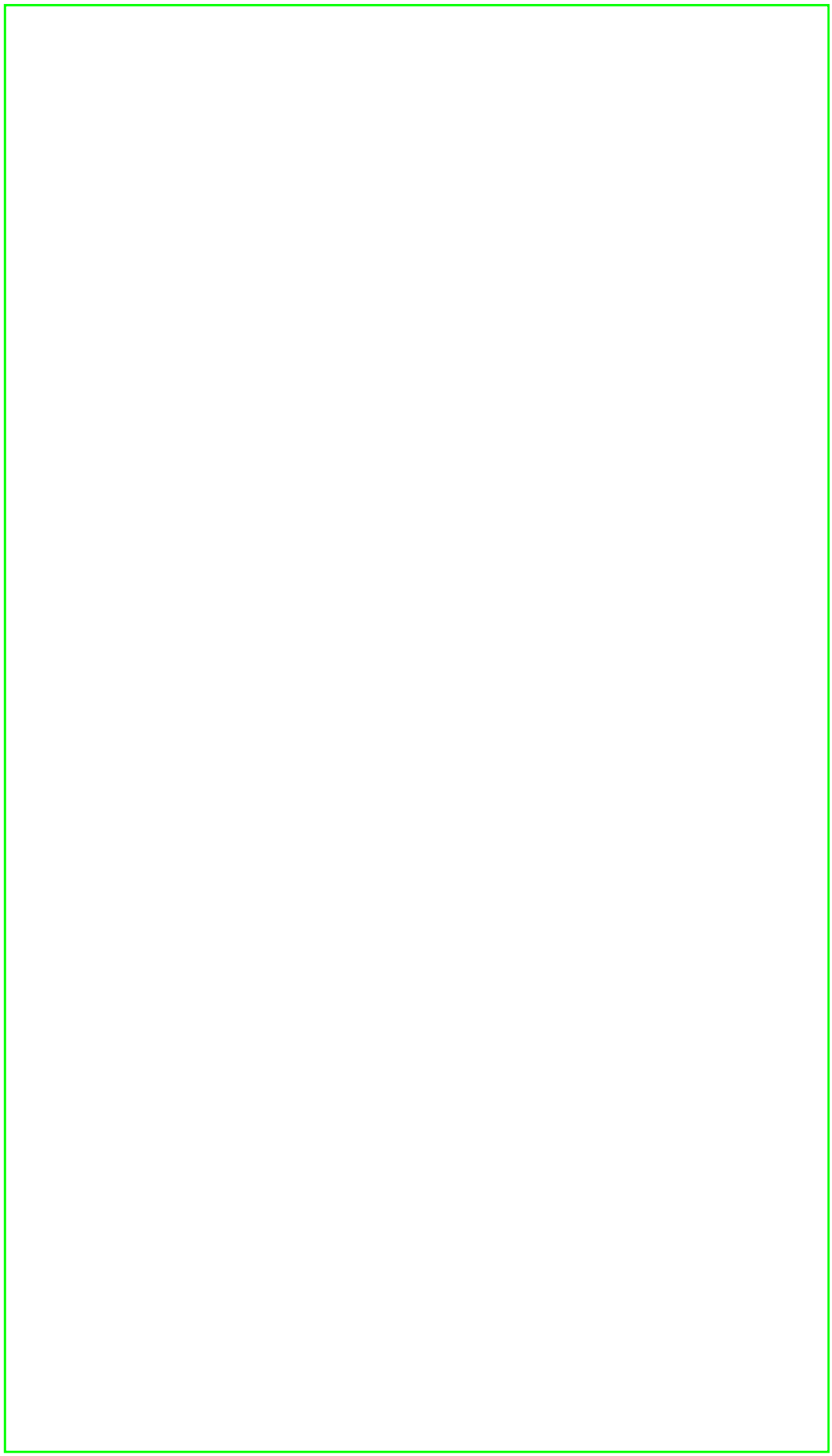
Cross References

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

59-1623 Act, how cited.

Sections 59-1601 to 59-1622 shall be known and may be cited as the Consumer Protection Act.

Source: Laws 1974, LB 1028, § 30; Laws 2002, LB 1278, § 33; Laws 2006, LB 1061, § 2.



CHAPTER 60
MOTOR VEHICLES

Article.

ARTICLE 1

MOTOR VEHICLE CERTIFICATE OF TITLE ACT

MOTOR VEHICLE CERTIFICATE OF TITLE ACT

Section

60-101 Act, how cited.

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

Source: Laws 2005, LB 276, § 1; Laws 2006, LB 663, § 1; Laws 2006, LB 1061, § 6; Laws 2007, LB286, § 1; Laws 2009, LB49, § 5; Laws 2009, LB202, § 10; Laws 2010, LB650, § 3.
Operative date January 1, 2011.

60-102 Definitions, where found.

For purposes of the Motor Vehicle Certificate of Title Act, unless the context otherwise requires, the definitions found in sections 60-103 to 60-136.01 shall be used.

Source: Laws 2005, LB 276, § 2; Laws 2007, LB286, § 2; Laws 2010, LB650, § 4.
Operative date January 1, 2011.

60-103 All-terrain vehicle, defined.

All-terrain vehicle means any motorized off-highway device which (1) is fifty inches or less in width, (2) has a dry weight of nine hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for

the operator and one passenger, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control.

Source: Laws 2005, LB 276, § 3.

60-104 Assembled vehicle, defined.

Assembled vehicle means a vehicle that is materially altered from its construction by the removal, addition, or substitution of new or used major component parts. Its make shall be assembled, and its model year shall be the year in which the vehicle was assembled. Assembled vehicle also includes a specially constructed vehicle.

Source: Laws 2005, LB 276, § 4.

60-105 Body, defined.

Body means that portion of a vehicle which determines its shape and appearance and is attached to the frame.

Source: Laws 2005, LB 276, § 5.

60-106 Bus, defined.

Bus means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Source: Laws 2005, LB 276, § 6.

60-107 Cabin trailer, defined.

Cabin trailer means a trailer or a semitrailer, which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, whether used for such purposes or instead permanently or temporarily for the advertising, sale, display, or promotion of merchandise or services or for any other commercial purpose except transportation of property for hire or transportation of property for distribution by a private carrier. Cabin trailer does not mean a trailer or semitrailer which is permanently attached to real estate. There are four classes of cabin trailers:

(1) Camping trailer which includes cabin trailers one hundred two inches or less in width and forty feet or less in length and adjusted mechanically smaller for towing;

(2) Mobile home which includes cabin trailers more than one hundred two inches in width or more than forty feet in length;

(3) Travel trailer which includes cabin trailers not more than one hundred two inches in width nor more than forty feet in length from front hitch to rear bumper, except as provided in subdivision (2)(k) of section 60-6,288; and

(4) 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 frame 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.

Source: Laws 2005, LB 276, § 7; Laws 2008, LB797, § 1.

60-108 Collector, defined.

Collector means the owner of one or more vehicles of historical interest who collects, purchases, acquires, trades, or disposes of such vehicles or parts thereof for his or her own use in order to preserve, restore, and maintain a vehicle or vehicles for hobby purposes.

Source: Laws 2005, LB 276, § 8.

60-109 Commercial trailer, defined.

Commercial trailer means any trailer or semitrailer which has a gross weight, including load thereon, of more than nine thousand pounds and which is designed, used, or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property. Commercial trailer does not include cabin trailers, farm trailers, fertilizer trailers, or utility trailers.

Source: Laws 2005, LB 276, § 9.

60-110 Department, defined.

Department means the Department of Motor Vehicles.

Source: Laws 2005, LB 276, § 10.

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.

60-112 Director, defined.

Director means the Director of Motor Vehicles.

Source: Laws 2005, LB 276, § 12.

60-113 Electric personal assistive mobility device, defined.

Electric personal assistive mobility device means a self-balancing, two-non-tandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an

operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

Source: Laws 2005, LB 276, § 13.

60-114 Farm trailer, defined.

Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products as defined in section 60-304 to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services.

Source: Laws 2005, LB 276, § 14; Laws 2007, LB286, § 3.

60-115 Fertilizer trailer, defined.

Fertilizer trailer means any trailer, including gooseneck applicators or trailers, designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and having a gross weight, including load thereon, of twenty thousand pounds or less.

Source: Laws 2005, LB 276, § 15.

60-116 Frame, defined.

Frame means that portion of a vehicle upon which other components are affixed, such as the engine, body, or transmission.

Source: Laws 2005, LB 276, § 16.

60-117 Historical vehicle, defined.

Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

Source: Laws 2005, LB 276, § 17; Laws 2006, LB 663, § 2; Laws 2007, LB286, § 4.

60-118 Inspection, defined.

Inspection means an identification inspection conducted pursuant to section 60-146.

Source: Laws 2005, LB 276, § 18.

60-119 Kit vehicle, defined.

Kit vehicle means a vehicle assembled by a person other than a generally recognized manufacturer of vehicles by the use of a replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin. The term kit vehicle does not include glider kits.

Source: Laws 2005, LB 276, § 19.

60-119.01 Low-speed vehicle, defined.

Low-speed vehicle means a vehicle that (1) cannot travel more than twenty-five miles per hour on a paved, level surface, (2) complies with 49 C.F.R. part 571, as such part existed on January 1, 2007, or (3) is designated by the manufacturer as an off-road or low-speed vehicle.

Source: Laws 2007, LB286, § 5.

60-120 Major component part, defined.

Major component part means an engine, with or without accessories, a transmission, a cowl, a door, a frame, a body, a rear clip, or a nose.

Source: Laws 2005, LB 276, § 20.

60-121 Minibike, defined.

Minibike means a two-wheel device which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel device primarily designed by the manufacturer for off-road use only. Minibike does not include an electric personal assistive mobility device.

Source: Laws 2005, LB 276, § 21.

60-121.01 Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB650, § 5.
Operative date January 1, 2011.

60-122 Moped, defined.

Moped means a bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than thirty miles per hour on level ground.

Source: Laws 2005, LB 276, § 22.

60-123 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and

a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) low-speed vehicles.

Source: Laws 2005, LB 276, § 23; Laws 2006, LB 765, § 1; Laws 2007, LB286, § 6; Laws 2010, LB650, § 6.
Operative date January 1, 2011.

60-124 Motorcycle, defined.

Motorcycle means any motor vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground.

Source: Laws 2005, LB 276, § 24.

60-125 Nose, defined.

Nose means that portion of the body of a vehicle from the front to the firewall when acquired or transferred as a complete unit.

Source: Laws 2005, LB 276, § 25.

60-126 Parts vehicle, defined.

Parts vehicle means a vehicle generally in nonoperable condition which is owned by a collector to furnish parts that are usually not obtainable from normal sources, thus enabling a collector to preserve, restore, and maintain a historical vehicle.

Source: Laws 2005, LB 276, § 26.

60-127 Patrol, defined.

Patrol means the Nebraska State Patrol.

Source: Laws 2005, LB 276, § 27.

60-128 Rear clip, defined.

Rear clip means two or more of the following, all dismantled from the same vehicle: A quarter panel or fender; a floor panel assembly; or a trunk lid or gate.

Source: Laws 2005, LB 276, § 28.

60-129 Semitrailer, defined.

Semitrailer means any trailer so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

Source: Laws 2005, LB 276, § 29.

60-130 Situs, defined.

Situs means the tax district where a vehicle is stored and kept for the greater portion of the calendar year. For a vehicle used or owned by a student, the situs is at the place of residence of the student if different from the place at which he or she is attending school.

Source: Laws 2005, LB 276, § 30.

60-131 Specially constructed vehicle, defined.

Specially constructed vehicle means a vehicle which was not originally constructed under a distinctive name, make, model, or type by a manufacturer of vehicles. The term specially constructed vehicle includes kit vehicle.

Source: Laws 2005, LB 276, § 31.

60-132 Superintendent, defined.

Superintendent means the Superintendent of Law Enforcement and Public Safety.

Source: Laws 2005, LB 276, § 32.

60-133 Trailer, defined.

Trailer means any device without motive power designed for carrying persons or property and being towed by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Source: Laws 2005, LB 276, § 33.

60-134 Truck, defined.

Truck means any motor vehicle designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

Source: Laws 2005, LB 276, § 34; Laws 2007, LB286, § 7.

60-135 Utility trailer, defined.

Utility trailer means a trailer having a gross weight, including load thereon, of nine thousand pounds or less.

Source: Laws 2005, LB 276, § 35.

60-135.01 Utility-type vehicle, defined.

(1) Utility-type vehicle means any motorized off-highway device which (a) is not less than forty-eight inches nor more than seventy-four inches in width, (b) is not more than one hundred thirty-five inches, including the bumper, in length, (c) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (d) travels on four or more low-pressure tires, and (e) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.

(2) Utility-type vehicle does not include golf carts or low-speed vehicles.

Source: Laws 2010, LB650, § 7.
Operative date January 1, 2011.

60-136 Vehicle, defined.

Vehicle means a motor vehicle, all-terrain vehicle, utility-type vehicle, minibike, trailer, or semitrailer.

Source: Laws 2005, LB 276, § 36; Laws 2010, LB650, § 8. Operative date January 1, 2011.

60-136.01 Vehicle identification number, defined.

Vehicle identification number means a series of English letters or Arabic or Roman numerals assigned to a vehicle for identification purposes.

Source: Laws 2007, LB286, § 8.

60-137 Act; applicability.

(1) The Motor Vehicle Certificate of Title Act applies to all vehicles as defined in the act, except:

(a) Farm trailers;

(b) Low-speed vehicles;

(c) Well-boring apparatus, backhoes, bulldozers, and front-end loaders; and

(d) Trucks and buses from other jurisdictions required to pay registration fees under the Motor Vehicle Registration Act, except a vehicle registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198.

(2) All new all-terrain vehicles and minibikes sold on or after January 1, 2004, shall be required to have a certificate of title. An owner of an all-terrain vehicle or minibike sold prior to such date may apply for a certificate of title for such all-terrain vehicle or minibike as provided in rules and regulations of the department.

(3) An owner of a utility trailer may apply for a certificate of title upon compliance with the Motor Vehicle Certificate of Title Act.

(4)(a) Every owner of a manufactured home or mobile home shall obtain a certificate of title for the manufactured home or mobile home prior to affixing it to real estate.

(b) If a manufactured home or mobile home has been affixed to real estate and a certificate of title was not issued before it was so affixed, the owner of such manufactured home or mobile home shall apply for and be issued a certificate of title at any time for surrender and cancellation as provided in section 60-169.

(5) All new utility-type vehicles sold on or after January 1, 2011, shall be required to have a certificate of title. An owner of a utility-type vehicle sold prior to such date may apply for a certificate of title for such utility-type vehicle as provided in rules and regulations of the department.

Source: Laws 2005, LB 276, § 37; Laws 2006, LB 765, § 2; Laws 2007, LB286, § 9; Laws 2008, LB953, § 2; Laws 2010, LB650, § 9. Operative date January 1, 2011.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-138 Manufacturer's or importer's certificate; vehicle identification number.

No manufacturer, importer, dealer, or other person shall sell or otherwise dispose of a new vehicle to a dealer to be used by such dealer for purposes of display and resale without (1) delivering to such dealer a duly executed manufacturer's or importer's certificate with such assignments as may be necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No dealer shall purchase or acquire a new vehicle without obtaining from the seller such manufacturer's or importer's certificate.

Source: Laws 2005, LB 276, § 38.

60-139 Certificate of title; vehicle identification number; required; when.

Except as provided in section 60-137, 60-138, or 60-142.01, no person shall sell or otherwise dispose of a vehicle without (1) delivering to the purchaser or transferee of such vehicle a certificate of title with such assignments thereon as are necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No person shall bring into this state a vehicle for which a certificate of title is required in Nebraska, except for temporary use, without complying with the Motor Vehicle Certificate of Title Act.

No purchaser or transferee shall receive a certificate of title which does not contain such assignments as are necessary to show title in the purchaser or transferee. Possession of a certificate of title which does not comply with this requirement shall be prima facie evidence of a violation of this section, and such purchaser or transferee, upon conviction, shall be subject to the penalty provided by section 60-180.

Source: Laws 2005, LB 276, § 39; Laws 2006, LB 663, § 3.

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.

60-141 Dealer; inventory; certificates required; when.

A dealer need not apply for certificates of title for any vehicles in stock or acquired for stock purposes, but upon transfer of such vehicle in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on such vehicle or an assignment of a manufacturer's or importer's certificate. If all reassignments on the manufacturer's or importer's certificate have been used, the dealer may attach a dealer assignment form prescribed by the department prior to any subsequent transfer. If all reassignments on the dealer assignment form or the certificate of title have been used, the dealer shall obtain title in the dealer's name prior to any subsequent transfer. No dealer shall execute a reassignment on or transfer ownership by way of a manufacturer's statement of origin unless the dealer is franchised by the manufacturer of the vehicle.

Source: Laws 2005, LB 276, § 41; Laws 2008, LB756, § 2.

60-142 Historical vehicle or parts vehicle; sale or transfer.

The sale or trade and subsequent legal transfer of ownership of a historical vehicle or parts vehicle shall not be contingent upon any condition that would require the historical vehicle or parts vehicle to be in operating condition at the time of the sale or transfer of ownership.

Source: Laws 2005, LB 276, § 42; Laws 2006, LB 663, § 5.

60-142.01 Vehicle manufactured prior to 1940; transfer of title; requirements.

If the owner does not have a certificate of title for a vehicle which was manufactured prior to 1940 and which has not had any major component part replaced, the department shall search its records for evidence of issuance of a Nebraska certificate of title for such vehicle at the request of the owner. If no certificate of title has been issued for such vehicle in the thirty-year period prior to application, the owner may transfer title to the vehicle by giving the transferee a notarized bill of sale, an affidavit in support of the application for title, a statement that an inspection has been conducted on the vehicle, and a statement from the department that no certificate of title has been issued for such vehicle in the thirty-year period prior to application. The transferee may apply for a certificate of title pursuant to section 60-149 by presenting the documentation described in this section in lieu of a certificate of title.

Source: Laws 2006, LB 663, § 6.

60-142.02 Application for certificate of title indicating year, make, and model originally designated by manufacturer; procedure.

If the owner does not have a certificate of title for a vehicle manufactured more than thirty years prior to application for a certificate of title and one or more major component parts have been replaced with one or more replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of the vehicle, the owner may apply for a certificate of title indicating that the year, make, and model of the vehicle is that originally designated by the manufacturer by presenting a notarized bill of sale for each major component part replaced, an affidavit in support of the application for title, a statement that an inspection has been conducted on the vehicle, a statement from a car

club representative pursuant to section 60-142.03, and a vehicle identification number as described in section 60-148.

Source: Laws 2006, LB 663, § 7.

60-142.03 Recognized car club; qualified car club representative; department; powers and duties.

(1) For purposes of this section, car club means an organization that has members with knowledge of and expertise pertaining to authentic vehicles and that has members with knowledge of and expertise pertaining to the restoration and preservation of specific makes and models of vehicles using replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for a specific year, make, and model of vehicle.

(2) To become a recognized car club, a car club shall apply to the department. For a car club to become recognized, it must be a nonprofit organization with established bylaws and at least twenty members. The applicant shall provide a copy of the bylaws and a membership list to the department. The department shall determine if a car club qualifies as a recognized car club. The determination of the department shall be final and nonappealable.

(3) A member of a recognized car club may apply to the department to become a qualified car club representative. Each qualified car club representative shall be designated by the president or director of the local chapter of the recognized car club of which he or she is a member. The department shall identify and maintain a list of qualified car club representatives. A qualified car club representative may apply to be placed on the list of qualified car club representatives by providing the department with his or her name, address, and telephone number, the name, address, and telephone number of the recognized car club he or she represents, a copy of the designation of the representative by the president or director of the local chapter of the recognized car club, and such other information as may be required by the department. The department may place a qualified car club representative on the list upon receipt of a completed application and may provide each representative with information for inspection of vehicles and parts. The determination of the department regarding designation of an individual as a qualified car club representative and placement on the list of qualified car club representatives shall be final and nonappealable. The department shall distribute the list to county clerks and designated county officials.

(4) When a qualified car club representative inspects vehicles and replacement parts, he or she shall determine whether all major component parts used in the assembly of a vehicle are original or essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, including the appropriate engine, body material, body shape, and other requirements as prescribed by the department. After such inspection, the representative shall provide the owner with a statement in the form prescribed by the department which includes the findings of the inspection. No qualified car club representative shall charge any fee for the inspection or the statement. No qualified car club representative shall provide a statement for any vehicle owned by such representative or any member of his or her immediate family.

(5) The director may summarily remove a person from the list of qualified car club representatives upon written notice. Such person may reapply for inclu-

sion on the list upon presentation of suitable evidence satisfying the director that the cause for removal from the list has been corrected, eliminated, no longer exists, or will not affect or interfere with the person's judgment or qualifications for inspection of vehicles to determine whether or not any replacement parts are essentially the same in design and material to that originally supplied by the original manufacturer for the specific year, make, and model of vehicle.

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

Source: Laws 2006, LB 663, § 8.

60-142.04 Assembled vehicle; application for certificate of title; procedure.

The owner of (1) an assembled vehicle or (2) a vehicle which was manufactured or assembled more than thirty years prior to application for a certificate of title with one or more major component parts replaced by replacement parts, other than replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, may apply for a certificate of title by presenting a certificate of title for one major component part, a notarized bill of sale for all other major component parts replaced, a statement that an inspection has been conducted on the vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the vehicle as the year application for title was made and the make of the vehicle as assembled.

Source: Laws 2006, LB 663, § 9.

60-142.05 Kit vehicle; application for certificate of title; procedure.

The owner of a kit vehicle may apply for a certificate of title by presenting a manufacturer's statement of origin for the kit, a notarized bill of sale for all major component parts not in the kit, a statement that an inspection has been conducted on the vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the vehicle as the year application for title was made and the make of the vehicle as assembled.

Source: Laws 2006, LB 663, § 10.

60-142.06 Certificate of title as assembled vehicle; application for certificate of title indicating year, make, and model; procedure.

An owner of a vehicle which has previously been issued a certificate of title as an assembled vehicle in this state may have the vehicle inspected by a qualified car club representative who shall determine whether or not any modifications or replacement parts are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle and obtain a statement as provided in section 60-142.03. The owner may apply for a certificate of title indicating the year, make, and model of the vehicle by presenting the statement and an application for certificate of title to the department. After review of the application, the department shall issue the

certificate of title to the owner if the vehicle meets the specifications provided in section 60-142.02.

Source: Laws 2006, LB 663, § 11.

60-142.07 Minitruck; application for certificate of title; contents of certificate.

If a minitruck does not have a manufacturer's vehicle identification number, the owner of the minitruck may apply for a certificate of title by presenting (1)(a) a manufacturer's statement of origin for the minitruck or (b)(i) a bill of sale or a manufacturer's or importer's certificate for a minitruck purchased before January 1, 2011, or a manufacturer's or importer's certificate for a minitruck purchased on or after January 1, 2011, and (ii) an affidavit by the owner affirming ownership for the minitruck, (2) a statement that an inspection has been conducted on the minitruck, and (3) a vehicle identification number as described in section 60-148. The certificate of title shall indicate the make and model year of the minitruck. If the model year cannot be determined, the model year of the minitruck shall be the year application for title was made.

Source: Laws 2010, LB650, § 10.
Operative date January 1, 2011.

60-143 Vehicle with modification or deviation from original specifications; how treated.

An owner of a vehicle with a modification or deviation from the original specifications may be permitted to apply for a certificate of title under sections 60-142.01 to 60-142.03 if such modification or deviation is of historic nature and essentially the same in design and material to that originally supplied by the manufacturer for vehicles of that era or if the modification or deviation could be considered to be in the category of safety features. Safety-related modifications include hydraulic brakes, sealed-beam headlights, and occupant protection systems as defined in section 60-6,265. A modification or deviation involving accessories shall be limited to those accessories available in the era to which the vehicle belongs.

Source: Laws 2005, LB 276, § 43; Laws 2006, LB 663, § 12.

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

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

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

(c) The department shall issue and file certificates of title for state-owned vehicles. Application for a certificate of title shall be made upon a form

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

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

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

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

(b) If a motor vehicle dealer licensed under the Motor Vehicle Industry Regulation Act, applies for a certificate of title for a vehicle, the application may be filed with the county clerk or designated county official of any county.

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

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

(6) All applicants registering a vehicle pursuant to section 60-3,198 shall file the application for a certificate of title with the Division of Motor Carrier Services of the department. The division shall deliver the certificate to the applicant if there are no liens on the vehicle. If there are 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; Laws 2010, LB650, § 11; Laws 2010, LB816, § 4.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB650, section 11, with LB816, section 4, to reflect all amendments.

Note: Changes made by LB816 became effective March 4, 2010. Changes made by LB650 became operative January 1, 2011.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-145 Motor vehicle used as taxi or limousine; disclosure on face of certificate of title required.

For any motor vehicle which is to be used as a taxi or limousine, the application and the certificate of title shall show on the face thereof that such vehicle is being used or has been used as a taxi or limousine and such subsequent certificates of title shall show the same information.

Source: Laws 2005, LB 276, § 45; Laws 2007, LB286, § 10.

60-146 Application; identification inspection required; exceptions; form; procedure; additional inspection authorized.

(1) An application for a certificate of title for a vehicle shall include a statement that an identification inspection has been conducted on the vehicle

unless (a) the title sought is a salvage branded certificate of title or a nontransferable certificate of title, (b) the surrendered ownership document is a Nebraska certificate of title, a manufacturer's statement of origin, an importer's statement of origin, a United States Government Certificate of Release of a vehicle, or a nontransferable certificate of title, (c) the application contains a statement that the vehicle is to be registered under section 60-3,198, (d) the vehicle is a cabin trailer, (e) the title sought is the first title for the vehicle sold directly by the manufacturer of the vehicle to a dealer franchised by the manufacturer, or (f) the vehicle was sold at an auction authorized by the manufacturer and purchased by a dealer franchised by the manufacturer of the vehicle.

(2) The department shall prescribe a form to be executed by a dealer and submitted with an application for a certificate of title for vehicles exempt from inspection pursuant to subdivision (1)(e) or (f) of this section. The form shall clearly identify the vehicle and state under penalty of law that the vehicle is exempt from inspection.

(3) The statement that an identification inspection has been conducted shall be furnished by the county sheriff of any county or by any other holder of a certificate of training issued pursuant to section 60-183, shall be in a format as determined by the department, and shall expire ninety days after the date of the inspection. The county clerk or designated county official shall accept a certificate of inspection, approved by the superintendent, from an officer of a state police agency of another state.

(4) The identification inspection shall include examination and notation of the then current odometer reading, if any, and a comparison of the vehicle identification number with the number listed on the ownership records, except that if a lien is registered against a vehicle and recorded on the vehicle's ownership records, the county clerk or designated county official shall provide a copy of the ownership records for use in making such comparison. If such numbers are not identical, if there is reason to believe further inspection is necessary, or if the inspection is for a Nebraska assigned number, the person performing the inspection shall make a further inspection of the vehicle which may include, but shall not be limited to, examination of other identifying numbers placed on the vehicle by the manufacturer and an inquiry into the numbering system used by the state issuing such ownership records to determine ownership of a vehicle. The identification inspection shall also include a statement that the vehicle identification number has been checked for entry in the National Crime Information Center and the Nebraska Crime Information Service. In the case of an assembled vehicle, the identification inspection shall include, but not be limited to, an examination of the records showing the date of receipt and source of each major component part. No identification inspection shall be conducted unless all major component parts are properly attached to the vehicle in the correct location.

(5) If there is cause to believe that odometer fraud exists, written notification shall be given to the office of the Attorney General. If after such inspection the sheriff or his or her designee determines that the vehicle is not the vehicle described by the ownership records, no statement shall be issued.

(6) The department, county clerk, or designated county official may also request an identification inspection of a vehicle to determine if it meets the definition of motor vehicle as defined in section 60-123.

Source: Laws 2005, LB 276, § 46; Laws 2006, LB 765, § 4; Laws 2007, LB286, § 11.

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.

60-148 Assignment of distinguishing identification number; when.

(1) Whenever a person applies for a certificate of title for a vehicle, the department shall assign a distinguishing identification number to the vehicle if the vehicle identification number is destroyed, obliterated, or missing. The owner of such a vehicle to which such number is assigned shall have such number affixed to such vehicle as provided in subsection (2) of this section and sign an affidavit on a form prepared by the department that such number has been attached. Before the certificate of title for an assigned number is released to the applicant by the county clerk or designated county official, the applicant shall also provide a statement that an inspection has been conducted.

(2) The department shall develop a metallic assigned vehicle identification number plate which can be permanently secured to a vehicle by rivets or a permanent sticker or other form of marking or identifying the vehicle with the distinguishing identification number as determined by the director. All distinguishing identification numbers shall contain seventeen characters in conformance with national standards. When the manufacturer's vehicle identification number is known, it shall be used by the department as the assigned number. In the case of an assembled all-terrain vehicle, utility-type vehicle, or minibike or assembled vehicle, the department shall use a distinguishing identification number. The department shall, upon application by an owner, provide the owner with a number plate or a permanent sticker or other form of marking or identification displaying a distinguishing identification number or the manufacturer's number.

(3) Any vehicle to which a distinguishing identification number is assigned shall be titled under such distinguishing identification number when titling of the vehicle is required under the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 48; Laws 2006, LB 663, § 14; Laws 2010, LB650, § 12.
Operative date January 1, 2011.

60-149 Application; documentation required.

(1)(a) If a certificate of title has previously been issued for a vehicle in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned except as otherwise provided in the Motor Vehicle Certificate of Title Act.

(b) Except for manufactured homes or mobile homes as provided in subsection (2) of this section, if a certificate of title has not previously been issued for the vehicle in this state or if a certificate of title is unavailable pursuant to subsection (4) of section 52-1801, the application shall be accompanied by:

(i) A manufacturer's or importer's certificate except as otherwise provided in subdivision (vii) of this subdivision;

(ii) A duly certified copy of the manufacturer's or importer's certificate;

(iii) An affidavit by the owner affirming ownership in the case of an all-terrain vehicle, a utility-type vehicle, or a minibike;

(iv) A certificate of title from another state;

(v) A court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the law of the state from which the vehicle was brought into this state does not have a certificate of title law;

(vi) Documentation prescribed in section 60-142.01, 60-142.02, 60-142.04, or 60-142.05; or

(vii) A manufacturer's or importer's certificate and an affidavit by the owner affirming ownership in the case of a minitruck.

(c) If the application for a certificate of title in this state is accompanied by a valid certificate of title issued by another state which meets that state's requirements for transfer of ownership, then the application may be accepted by this state.

(d) If a certificate of title has not previously been issued for the vehicle in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 60-167.

(2)(a) If the application for a certificate of title for a manufactured home or a mobile home is being made in accordance with subdivision (4)(b) of section 60-137 or if the certificate of title for a manufactured home or a mobile home is unavailable pursuant to section 52-1801, the application shall be accompanied by proof of ownership in the form of:

(i) A duly assigned manufacturer's or importer's certificate;

(ii) A certificate of title from another state;

(iii) A court order issued by a court of record;

(iv) Evidence of ownership as provided for in section 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, or 60-2401 to 60-2411; or

(v) Assessment records for the manufactured home or mobile home from the county assessor and an affidavit by the owner affirming ownership.

(b) If the applicant cannot produce proof of ownership described in subdivision (a) of this subsection, 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.

(3) For purposes of this section, certificate of title includes a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle. Only a salvage branded certificate of title shall be issued to any vehicle conveyed upon a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle.

(4) The county clerk or designated county official shall retain the evidence of title presented by the applicant and on which the certificate of title is issued.

Source: Laws 2005, LB 276, § 49; Laws 2006, LB 663, § 15; Laws 2010, LB650, § 13; Laws 2010, LB933, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB650, section 13, with LB933, section 1, to reflect all amendments.

Note: Changes made by LB933 became effective July 15, 2010. Changes made by LB650 became operative January 1, 2011.

60-150 Application; county clerk or designated county official; duties.

The county clerk or designated county official shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records available. If he or she is satisfied that the applicant is the owner of such vehicle and that the application is in the proper form, the county clerk or designated county official shall issue a certificate of title over his or her signature and sealed with the appropriate seal.

Source: Laws 2005, LB 276, § 50.

60-151 Certificate of title obtained in name of purchaser; exceptions.

The certificate of title for a vehicle shall be obtained in the name of the purchaser upon application signed by the purchaser, except that (1) for titles to be held by husband and wife, applications may be accepted upon the signature of either one as a signature for himself or herself and as agent for his or her spouse and (2) for an applicant providing proof that he or she is a handicapped or disabled person as defined in section 18-1738, applications may be accepted upon the signature of the applicant's parent, legal guardian, foster parent, or agent.

Source: Laws 2005, LB 276, § 51.

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.

60-153 Certificate of title; form; contents; secure power-of-attorney form.

(1) A certificate of title shall be printed upon safety security paper to be selected by the department. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to, county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the vehicle, name and residential and mailing address of the owner, acquisition date, issuing county clerk's or designated county official's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. A certificate of title issued on or after September 1, 2007, shall include the words ''void if altered''. A certificate of title that is altered shall be deemed a mutilated certificate of title. The certificate of title of an all-terrain vehicle, utility-type vehicle, or minibike shall include the words ''not to be registered for road use''.

(2) An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the vehicle assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 18-1738.

(3) A reassignment by a dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or her right, title, and interest in the vehicle, the name and address of the

assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient.

(4) The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986 and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

Source: Laws 2005, LB 276, § 53; Laws 2007, LB286, § 13; Laws 2010, LB650, § 14.
Operative date January 1, 2011.

60-154 Fees.

(1)(a) For each original certificate of title issued by a county for a motor vehicle or trailer, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; forty-five cents to the Nebraska State Patrol Cash Fund; and ten cents to the Nebraska Motor Vehicle Industry Licensing Fund.

(b) For each original certificate of title issued by a county for an all-terrain vehicle, a utility-type vehicle, or a minibike, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; and fifty-five cents to the Nebraska State Patrol Cash Fund.

(2) For each original certificate of title issued by the department for a vehicle except as provided in section 60-159.01, the fee shall be ten dollars, which shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 54; Laws 2006, LB 663, § 16; Laws 2006, LB 1061, § 7; Laws 2010, LB650, § 15.
Operative date January 1, 2011.

60-154.01 Motor Vehicle Fraud Cash Fund; created; use; investment.

The Motor Vehicle Fraud 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 revenue credited pursuant to section 60-154. The fund shall only be used by the Department of Justice for expenses incurred and related to (1) the investigation and prosecution of odometer and motor vehicle fraud and motor vehicle licensing violations which may be referred by the Nebraska Motor Vehicle Industry Licensing Board and (2) the investigation and prosecution of fraud relating to and theft of all-terrain vehicles, utility-type

vehicles, and minibikes. Expenditures from the fund shall be approved by the Attorney General as authorized by law. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2006, LB 1061, § 8; Laws 2010, LB650, § 16.
Operative date January 1, 2011.

Cross References

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

60-155 Notation of lien; fees.

(1) For each notation of a lien by a county, the fee shall be seven dollars. Two dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. One dollar shall be remitted to the State Treasurer for credit to the General Fund.

(2) For each notation of a lien by the department, the fee shall be seven dollars, which shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 55.

60-156 Duplicate certificate of title; fees.

(1) For each duplicate certificate of title issued by a county for a vehicle, the fee shall be fourteen dollars. Ten dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2) For each duplicate certificate of title issued by the department for a vehicle, the fee shall be fourteen dollars, which shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 56.

60-157 Repealed. Laws 2007, LB 286, § 57.

60-158 Identification inspection; fees.

(1) For each identification inspection conducted by the patrol, the fee shall be ten dollars, which shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(2) For each identification inspection conducted by a county sheriff, the fee shall be ten dollars, which shall be paid to the county treasurer and credited to the county sheriff's vehicle inspection account within the county general fund.

Source: Laws 2005, LB 276, § 58.

60-159 Application for vehicle identification number or distinguishing identification number; fee.

For each application for a metallic assigned vehicle identification number plate or other form of marking or identification under section 60-148, the fee shall be twenty dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 276, § 59; Laws 2006, LB 663, § 17.

60-159.01 New title of vehicle previously issued title as assembled vehicle; fee.

For each certificate of title issued by the department under section 60-142.06, the fee shall be twenty-five dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2006, LB 663, § 18.

60-160 Bonded certificate of title; fee.

For each bonded certificate of title issued for a vehicle, the fee shall be fifty dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 276, § 60.

60-161 County clerk or designated official; remit funds; when.

The county clerk or designated county official shall remit all funds due the State Treasurer under sections 60-154 to 60-160 monthly and not later than the fifth day of the month following collection. The county clerk or designated county official shall remit fees not due the State of Nebraska to the respective county treasurer who shall credit the fees to the county general fund.

Source: Laws 2005, LB 276, § 61.

60-162 Department; powers; rules and regulations.

(1) The department may adopt and promulgate rules and regulations to insure uniform and orderly operation of the Motor Vehicle Certificate of Title Act, and the county clerk or designated county official of each county shall conform to such rules and regulations and proceed at the direction of the department. The department shall also provide the county clerks and designated county officials with the necessary training for the proper administration of the act.

(2) The department shall receive all instruments relating to vehicles forwarded to it by the county clerks and designated county officials under the act and shall maintain indices covering the state at large for the instruments so received. These indices shall be by motor number or by an identification number and alphabetically by the owner's name and shall be for the state at large and not for individual counties.

(3) The department shall provide and furnish the forms required by the act, except manufacturers' or importers' certificates.

(4) The county clerk or designated county official shall keep on hand a sufficient supply of blank forms which, except certificate of title forms, shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county.

Source: Laws 2005, LB 276, § 62.

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.

60-163 Department; cancellation of certificate of title; procedure.

(1) The department shall check with its records all duplicate certificates of title received from a county clerk or designated county official. If it appears that a certificate of title has been improperly issued, the department shall cancel the same. Upon cancellation of any certificate of title, the department shall notify the county clerk or designated county official who issued the same, and such county clerk or designated county official shall thereupon enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. The holder of such certificate of title shall return the same to the department forthwith.

(2) If a certificate of registration has been issued to the holder of a certificate of title so canceled, the department shall immediately cancel the same and demand the return of such certificate of registration and license plates or tags, and the holder of such certificate of registration and license plates or tags shall return the same to the department forthwith.

Source: Laws 2005, LB 276, § 63.

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 con-

tract, 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 the Motor Vehicle Industry Regulation Act 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 the Motor Vehicle Industry Regulation Act 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, a utility-type 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; Laws 2010, LB650, § 17; Laws 2010, LB816, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB650, section 17, with LB816, section 5, to reflect all amendments.

Note: Changes made by LB816 became effective March 4, 2010. Changes made by LB650 became operative January 1, 2011.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

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

(1) Any security interest in an all-terrain vehicle or minibike perfected pursuant to article 9, Uniform Commercial Code, before, on, or after January 1, 2004, or in a utility-type vehicle so perfected before, on, or after January 1, 2011, shall continue to be perfected until (a) the financing statement perfecting such security interest is terminated or lapses in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) an all-terrain vehicle, utility-type vehicle, 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, utility-type 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, utility-type 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, utility-type 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, utility-type 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) If the owner of a utility-type vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2011, the security interest holder may obtain a certificate of title in the name of the owner of the utility-type vehicle following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

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

Source: Laws 2005, LB 276, § 65; Laws 2009, LB202, § 16; Laws 2010, LB650, § 18.
Operative date January 1, 2011.

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.

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.

60-167 Bonded certificate of title; application; fee; bond; issuance; release; statement on title; recall; procedure.

(1) The department shall issue a bonded certificate of title to an applicant who:

(a) Presents evidence reasonably sufficient to satisfy the department of the applicant's ownership of the vehicle or security interest in the vehicle;

(b) Provides a statement that an identification inspection has been conducted pursuant to section 60-146;

(c) Pays the fee as prescribed in section 60-160; and

(d) Files a bond in a form prescribed by the department and executed by the applicant.

(2) The bond shall be issued by a surety company authorized to transact business in this state, in an amount equal to one and one-half times the value of the vehicle as determined by the department using reasonable appraisal methods, and conditioned to indemnify any prior owner and secured party, any subsequent purchaser and secured party, and any successor of the purchaser and secured party for any expense, loss, or damage, including reasonable attorney's fees, incurred by reason of the issuance of the certificate of title to the vehicle or any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the vehicle. An interested person may have a cause of action to recover on the bond for a breach of the conditions of the bond. The aggregate liability of the surety to all persons having a claim shall not exceed the amount of the bond.

(3) At the end of three years after the issuance of the bond, the holder of the certificate of title may apply to the department on a form prescribed by the department for the release of the bond and the removal of the notice required by subsection (4) of this section if no claim has been made on the bond. The department may release the bond at the end of three years after the issuance of the bond if all questions as to the ownership of the vehicle have been answered to the satisfaction of the department unless the department has been notified of the pendency of an action to recover on the bond. If the currently valid certificate of title is surrendered to the department, the department may release the bond prior to the end of the three-year period.

(4) The department shall include the following statement on a bonded certificate of title issued pursuant to this section and any subsequent title issued as a result of a title transfer while the bond is in effect:

NOTICE: THIS VEHICLE MAY BE SUBJECT TO AN UNDISCLOSED INTEREST, BOND NUMBER . . . . . .

(5) The department shall recall a bonded certificate of title if the department finds that the application for the title contained a false statement or if a check presented by the applicant for a bonded certificate of title is returned uncollected by a financial institution.

Source: Laws 2005, LB 276, § 67.

60-168 Certificate of title; loss or mutilation; duplicate certificate; subsequent purchaser, rights; recovery of original; duty of owner.

(1) In the event of a lost or mutilated certificate of title, the owner of the vehicle or the holder of a lien on the vehicle shall apply, upon a form prescribed by the department, to the department, if the certificate of title was issued by the department, or to any county clerk or designated county official for a duplicate certificate of title and shall pay the fee prescribed by section 60-156. The application shall be signed and sworn to by the person making the application or a person authorized to sign under section 60-151. Thereupon the county clerk or designated county official, with the approval of the department, or the department shall issue a duplicate certificate of title to the person entitled to receive the certificate of title. If the records of the title have been destroyed pursuant to section 60-152, the county clerk or designated county official shall issue a duplicate certificate of title to the person entitled to receive the same upon such showing as the county clerk or designated county official may deem sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county clerk or designated county official to issue a duplicate certificate of title. A duplicate certificate of title so issued shall show only those unreleased liens of record. The new purchaser shall be entitled to receive an original certificate of title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county clerk or designated county official prescribed in section 60-144.

(2) Any purchaser of a vehicle for which a certificate of title was lost or mutilated may at the time of purchase require the seller of the same to indemnify him or her and all subsequent purchasers of the vehicle against any loss which he, she, or they may suffer by reason of any claim presented upon the original certificate. In the event of the recovery of the original certificate of title by the owner, he or she shall forthwith surrender the same to the county clerk or designated county official or the department for cancellation.

Source: Laws 2005, LB 276, § 68; Laws 2007, LB286, § 16.

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.

60-168.02 Certificate of title in dealer's name; issuance authorized; documentation and fees required; dealer; duties.

(1) When a motor vehicle, commercial trailer, semitrailer, or cabin trailer is purchased by a motor vehicle dealer or trailer dealer and the original assigned certificate of title has been lost or mutilated, the dealer selling such motor vehicle or trailer may apply for an original certificate of title in the dealer's name. The following documentation and fees shall be submitted by the dealer:

(a) An application for a certificate of title in the name of such dealer;

(b) A photocopy from the dealer's records of the front and back of the lost or mutilated original certificate of title assigned to a dealer;

(c) A notarized affidavit from the purchaser of such motor vehicle or trailer for which the original assigned certificate of title was lost or mutilated stating that the original assigned certificate of title was lost or mutilated; and

(d) The appropriate certificate of title fee.

(2) The application and affidavit shall be on forms prescribed by the department. When the motor vehicle dealer or trailer dealer receives the new certificate of title in such dealer's name and assigns it to the purchaser, the dealer shall record the original sale date and provide the purchaser with a copy of the front and back of the original lost or mutilated certificate of title as evidence as to why the purchase date of the motor vehicle or trailer is prior to the issue date of the new certificate of title.

Source: Laws 2007, LB286, § 18; Laws 2008, LB756, § 4.

60-169 Vehicle; certificate of title; surrender and cancellation; when required; mobile home or manufactured home affixed to real property; certificate of title; surrender and cancellation; procedure; effect; detachment; owner; duties.

(1)(a) Except as otherwise provided in subdivision (b) of this subsection, each owner of a vehicle and each person mentioned as owner in the last certificate of title, when the vehicle is dismantled, destroyed, or changed in such a manner that it loses its character as a vehicle or changed in such a manner that it is not the vehicle described in the certificate of title, shall surrender his or her certificate of title to the county clerk or designated county official of the county where such certificate of title was issued or, if issued by the department, to the department. If the certificate of title is surrendered to the county clerk or designated county official, he or she shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon his or her records and shall notify the department of such cancellation. If the certificate is surrendered to

the department, it shall, with the consent of any holder of any lien noted thereon, enter a cancellation upon its records.

(b)(i) In the case of a mobile home or manufactured home for which a certificate of title has been issued, if such mobile home or manufactured home is affixed to real property in which each owner of the mobile home or manufactured home has any ownership interest, the certificate of title may be surrendered for cancellation to the county clerk or designated county official of the county where such certificate of title is issued or, if issued by the department, to the department, if at the time of surrender the owner submits to the county clerk, the designated county official, or the department an affidavit of affixture on a form provided by the department that contains all of the following, as applicable:

(A) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(B) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(C) The legal description of the real property upon which the mobile home or manufactured home is affixed and the names of all of the owners of record of the real property;

(D) A statement that the mobile home or manufactured home is affixed to the real property;

(E) The written consent of each holder of a lien duly noted on the certificate of title to the release of such lien and the cancellation of the certificate of title;

(F) A copy of the certificate of title surrendered for cancellation; and

(G) The name and address of an owner, a financial institution, or another entity to which notice of cancellation of the certificate of title may be delivered.

(ii) The person submitting an affidavit of affixture pursuant to subdivision (b)(i) of this subsection shall swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement in the affidavit may subject the person to penalties relating to perjury under section 28-915.

(2) If a certificate of title of a mobile home or manufactured home is surrendered to the county clerk or designated county official, along with the affidavit required by subdivision (1)(b) of this section, he or she shall enter a cancellation upon his or her records, notify the department of such cancellation, forward a duplicate original of the affidavit to the department, and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The county clerk or designated county official shall be entitled to collect fees from the person submitting the affidavit in accordance with sections 33-109 and 33-112 to cover the costs of filing such affidavit. If the certificate of title is surrendered to the department, along with the affidavit required by subdivision (1)(b) of this section, the department shall enter a cancellation upon its records and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The department shall be entitled to collect fees from the person submitting the affidavit in accordance with sections 33-109 and

33-112 to cover the costs of filing such affidavit. Following the cancellation of a certificate of title for a mobile home or manufactured home, neither the county clerk, the designated county official, nor the department shall issue a certificate of title for such mobile home or manufactured home, except as provided in subsection (5) of this section.

(3) If a mobile home or manufactured home is affixed to real estate before June 1, 2006, a person who is the holder of a lien or security interest in both the mobile home or manufactured home and the real estate to which it is affixed on such date may enforce its liens or security interests by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real estate.

(4) A mobile home or manufactured home for which the certificate of title has been canceled and for which an affidavit of affixture has been duly recorded pursuant to subsection (2) of this section shall be treated as part of the real estate upon which such mobile home or manufactured home is located. Any lien thereon shall be perfected and enforced in the same manner as a lien on real estate. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only as a part of the real estate to which it is affixed.

(5)(a) If each owner of both the mobile home or manufactured home and the real estate described in subdivision (1)(b) of this section intends to detach the mobile home or manufactured home from the real estate, the owner shall do both of the following: (i) Before detaching the mobile home or manufactured home, record an affidavit of detachment in the office of the register of deeds in the county in which the affidavit is recorded under subdivision (1)(b) of this section; and (ii) apply for a certificate of title for the mobile home or manufactured home pursuant to section 60-147.

(b) The affidavit of detachment shall contain all of the following:

(i) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(ii) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(iii) The legal description of the real estate from which the mobile home or manufactured home is to be detached and the names of all of the owners of record of the real estate;

(iv) A statement that the mobile home or manufactured home is to be detached from the real property;

(v) A statement that the certificate of title of the mobile home or manufactured home has previously been canceled;

(vi) The name of each holder of a lien of record against the real estate from which the mobile home or manufactured home is to be detached, with the written consent of each holder to the detachment; and

(vii) The name and address of an owner, a financial institution, or another entity to which the certificate of title may be delivered.

(6) An owner of an affixed mobile home or manufactured home for which the certificate of title has previously been canceled pursuant to subsection (2) of this section shall not detach the mobile home or manufactured home from the real estate before a certificate of title for the mobile home or manufactured

home is issued by the county clerk, designated county official, or department. If a certificate of title is issued by the county clerk, designated county official, or department, the mobile home or manufactured home is no longer considered part of the real property. Any lien thereon shall be perfected pursuant to section 60-164. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only by way of a certificate of title.

(7) For purposes of this section:

(a) A mobile home or manufactured home is affixed to real estate if the wheels, towing hitches, and running gear are removed and it is permanently attached to a foundation or other support system; and

(b) Ownership interest means the fee simple interest in real estate or an interest as the lessee under a lease of the real property that has a term that continues for at least twenty years after the recording of the affidavit under subsection (2) of this section.

(8) Upon cancellation of a certificate of title in the manner prescribed by this section, the county clerk or designated county official and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Source: Laws 2005, LB 276, § 69; Laws 2006, LB 663, § 19.

60-170 Nontransferable certificate of title; when issued; procedure; surrender for certificate of title; procedure.

(1) When an insurance company authorized to do business in Nebraska acquires a vehicle which has been properly titled and registered in a state other than Nebraska through payment of a total loss settlement on account of theft and the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair, the company shall obtain the certificate of title from the owner and may make application for a nontransferable certificate of title by surrendering the certificate of title to the county clerk or designated county official. A nontransferable certificate of title shall be issued in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160 and shall be on a form prescribed by the department.

(2) A vehicle which has a nontransferable certificate of title shall not be sold or otherwise transferred or disposed of without first obtaining a certificate of title under the Motor Vehicle Certificate of Title Act.

(3) When a nontransferable certificate of title is surrendered for a certificate of title, the application shall be accompanied by a statement from the insurance company stating that to the best of its knowledge the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair. The statement shall not constitute or imply a warranty of condition to any subsequent purchaser or operator of the vehicle.

Source: Laws 2005, LB 276, § 70.

60-171 Salvage branded certificate of title; terms, defined.

For purposes of sections 60-171 to 60-177:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a vehicle plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model vehicle means a vehicle which has (a) a manufacturer's model year designation of, or later than, the year in which the vehicle was wrecked, damaged, or destroyed, or any of the six preceding years or (b)(i) in the case of vehicles other than all-terrain vehicles, utility-type vehicles, and minibikes, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter or (ii) in the case of all-terrain vehicles, utility-type vehicles, or minibikes, a retail value of more than one thousand seven hundred fifty dollars until January 1, 2010, and a retail value of more than one thousand seven hundred fifty dollars increased by two hundred fifty dollars every five years thereafter;

(3) Manufacturer buyback means the designation of a vehicle with an alleged nonconformity when the vehicle (a) has been replaced by a manufacturer or (b) has been repurchased by a manufacturer as the result of court judgment, arbitration, or any voluntary agreement entered into between the manufacturer or its agent and a consumer;

(4) Previously salvaged means the designation of a rebuilt or reconstructed vehicle which was previously required to be issued a salvage branded certificate of title and which has been inspected as provided in section 60-146;

(5) Retail value means the actual cash value, fair market value, or retail value of a vehicle as (a) set forth in a current edition of any nationally recognized compilation, including automated data bases, of retail values or (b) determined pursuant to a market survey of comparable vehicles with respect to condition and equipment; and

(6) Salvage means the designation of a vehicle which is:

(a) A late model vehicle which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the vehicle to its condition immediately before it was wrecked, damaged, or destroyed and to restore the vehicle to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the vehicle at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the vehicle as a salvage vehicle by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the vehicle.

Source: Laws 2005, LB 276, § 71; Laws 2010, LB650, § 19.
Operative date January 1, 2011.

60-172 Salvage branded certificate of title; required disclosure.

A certificate of title issued on or after January 1, 2003, shall disclose in writing, from any records readily accessible to the department or county officials or a law enforcement officer, anything which indicates that the vehicle was previously issued a title in another jurisdiction that bore any word or symbol signifying that the vehicle was damaged, including, but not limited to,

older model salvage, unrebuildable, parts only, scrap, junk, nonrepairable, reconstructed, rebuilt, flood damaged, damaged, buyback, or any other indication, symbol, or word of like kind, and the name of the jurisdiction issuing the previous title.

Source: Laws 2005, LB 276, § 72.

60-173 Salvage branded certificate of title; insurance company; total loss settlement; when issued.

When an insurance company acquires a salvage vehicle through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county clerk or designated county official, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage vehicle for which a total loss settlement is made unless the owner of the salvage vehicle elects to retain the salvage vehicle. If the owner elects to retain the salvage vehicle, the insurance company shall notify the department of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the vehicle. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county clerk or designated county official in the county designated in section 60-144. The county clerk or designated county official shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the vehicle.

Source: Laws 2005, LB 276, § 73; Laws 2007, LB286, § 19.

60-174 Salvage branded certificate of title; salvage, previously salvaged, or manufacturer buyback title brand; inspection; when.

Whenever a title is issued in this state for a vehicle that is designated a salvage, previously salvaged, or manufacturer buyback, the following title brands shall be required: Salvage, previously salvaged, or manufacturer buyback. A certificate branded salvage, previously salvaged, or manufacturer buyback shall be administered in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160. When a salvage branded certificate of title is surrendered for a certificate of title branded previously salvaged, the application for a certificate of title shall be accompanied by a statement of inspection as provided in section 60-146.

Source: Laws 2005, LB 276, § 74.

60-175 Salvage branded certificate of title; nontransferable certificate of title; when issued; procedure; surrender for certificate of title; procedure.

Any person who acquires ownership of a salvage or manufacturer buyback vehicle for which he or she does not obtain a salvage branded or manufacturer buyback branded certificate of title shall surrender the certificate of title to the county clerk or designated county official and make application for a salvage branded or manufacturer buyback branded certificate of title within thirty days after acquisition or prior to the sale or resale of the vehicle or any major

component part of such vehicle or use of any major component part of the vehicle, whichever occurs earlier.

Source: Laws 2005, LB 276, § 75.

60-176 Salvage branded certificate of title; prohibited act; penalty.

Any person who knowingly transfers a wrecked, damaged, or destroyed vehicle in violation of sections 60-171 to 60-177 is guilty of a Class IV felony.

Source: Laws 2005, LB 276, § 76.

60-177 Salvage branded certificate of title; sections; how construed.

Nothing in sections 60-171 to 60-177 shall be construed to require the actual repair of a wrecked, damaged, or destroyed vehicle to be designated as salvage.

Source: Laws 2005, LB 276, § 77.

60-178 Stolen vehicle; duties of law enforcement and department.

Every sheriff, chief of police, or member of the patrol having knowledge of a stolen vehicle shall immediately furnish the department with full information in connection therewith. The department, whenever it receives a report of the theft or conversion of such a vehicle, whether owned in this or any other state, together with the make and manufacturer's serial number or motor number, if applicable, shall make a distinctive record thereof and file the same in the numerical order of the manufacturer's serial number with the index records of such vehicle of such make. The department shall prepare a report listing such vehicles stolen and recovered as disclosed by the reports submitted to it, and the report shall be distributed as it may deem advisable. In the event of the receipt from any county clerk or designated county official of a copy of a certificate of title to such vehicle, the department shall immediately notify the rightful owner thereof and the county clerk or designated county official who issued such certificate of title, and if upon investigation it appears that such certificate of title was improperly issued, the department shall immediately cancel the same. In the event of the recovery of such stolen or converted vehicle, the owner shall immediately notify the department, which shall cause the record of the theft or conversion to be removed from its file.

Source: Laws 2005, LB 276, § 78.

60-179 Prohibited acts; penalty.

A person commits a Class IV felony if he or she (1) forges any certificate of title or manufacturer's or importer's certificate to a vehicle, any assignment of either certificate, or any cancellation of any lien on a vehicle, (2) holds or uses such certificate, assignment, or cancellation knowing the same to have been forged, (3) procures or attempts to procure a certificate of title to a vehicle or passes or attempts to pass a certificate of title or any assignment thereof to a vehicle, knowing or having reason to believe that such vehicle has been stolen, (4) sells or offers for sale in this state a vehicle on which the motor number or manufacturer's serial number has been destroyed, removed, covered, altered, or defaced with knowledge of the destruction, removal, covering, alteration, or defacement of such motor number or manufacturer's serial number, (5) knowingly uses a false or fictitious name, knowingly gives a false or fictitious address, knowingly makes any false statement in any application or affidavit

required under the Motor Vehicle Certificate of Title Act or in a bill of sale or sworn statement of ownership, or (6) otherwise knowingly commits a fraud in any application for a certificate of title.

Source: Laws 2005, LB 276, § 79.

60-180 Violations; penalty.

(1) A person who operates in this state a vehicle for which a certificate of title is required without having such certificate in accordance with the Motor Vehicle Certificate of Title Act or upon which the certificate of title has been canceled is guilty of a Class III misdemeanor.

(2) A person who is a dealer or acting on behalf of a dealer and who acquires, purchases, holds, or displays for sale a new vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title therefor as provided for in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(3) A person who fails to surrender any certificate of title or any certificate of registration or license plates or tags upon cancellation of the same by the department and notice thereof as prescribed in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(4) A person who fails to surrender the certificate of title to the county clerk or designated county official as provided in section 60-169 in case of the destruction or dismantling or change of a vehicle in such respect that it is not the vehicle described in the certificate of title is guilty of a Class III misdemeanor.

(5) A person who purports to sell or transfer a vehicle without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or importer's certificate thereto duly assigned to such purchaser as provided in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(6) A person who knowingly alters or defaces a certificate of title or manufacturer's or importer's certificate is guilty of a Class III misdemeanor.

(7) Except as otherwise provided in section 60-179, a person who violates any of the other provisions of the Motor Vehicle Certificate of Title Act or any rules or regulations adopted and promulgated pursuant to the act is guilty of a Class III misdemeanor.

Source: Laws 2005, LB 276, § 80.

60-181 Vehicle identification inspections; training expenses; how paid.

The Nebraska State Patrol Cash Fund shall be used to defray the expenses of training personnel in title document examination, vehicle identification, and fraud and theft investigation and to defray the patrol's expenses arising pursuant to sections 60-181 to 60-189, including those incurred for printing and distribution of forms, personal services, hearings, and similar administrative functions. Personnel may include, but shall not be limited to, county clerks, designated county officials, investigative personnel of the Nebraska Motor Vehicle Industry Licensing Board, and peace officers as defined in section 60-646. The training program shall be administered by the patrol. The patrol may utilize the Nebraska Law Enforcement Training Center to accomplish the

training requirements of sections 60-181 to 60-189. The superintendent may make expenditures from the fund necessary to implement such training.

Source: Laws 2005, LB 276, § 81.

60-182 Vehicle identification inspections; sheriff; designate inspectors.

The sheriff shall designate a sufficient number of persons to become certified to assure completion of inspections with reasonable promptness.

Source: Laws 2005, LB 276, § 82.

60-183 Vehicle identification inspections; inspectors; certificate required; issuance.

No person shall conduct an inspection unless he or she is the holder of a current certificate of training issued by the patrol. The certificate of training shall be issued upon completion of a course of instruction, approved by the patrol, in the identification of stolen and altered vehicles. The superintendent may require an individual to take such additional training as he or she deems necessary in order to maintain a current certificate of training.

Source: Laws 2005, LB 276, § 83.

60-184 Vehicle identification inspections; application for training; contents.

The sheriff may designate an employee of his or her office, any individual who is a peace officer as defined in section 60-646, or, by agreement, a county clerk or designated county official to assist in accomplishing inspections. Upon designation, the person shall request approval for training from the superintendent. Any person requesting approval for training shall submit a written application to the patrol. Such application shall include the following information: (1) The name and address of the applicant; (2) the name and address of the agency employing the applicant and the name of the agency head; and (3) such biographical information as the superintendent may require to facilitate the designation authorized by this section.

Source: Laws 2005, LB 276, § 84.

60-185 Vehicle identification inspections; application for training; investigation; denial; grounds.

(1) Upon receipt of an application for training pursuant to section 60-184, the patrol may inquire into the qualifications of the applicant and may also inquire into the background of the applicant.

(2) The patrol shall not approve any applicant who has (a) knowingly purchased, sold, or done business in stolen vehicles or parts therefor, (b) been found guilty of any felony which has not been pardoned, been found guilty of any misdemeanor concerning fraud or conversion, or suffered any judgment in any civil action involving fraud, misrepresentation, or conversion, or (c) made a false material statement in his or her application.

Source: Laws 2005, LB 276, § 85.

60-186 Vehicle identification inspections; revocation of certificate of training; procedure; appeal.

The patrol may, after notice and a hearing, revoke a certificate of training. The patrol shall only be required to hold a hearing if the hearing is requested in writing within fifteen days after notice of the proposed revocation is delivered by the patrol. The patrol may revoke a certificate of training for any reason for which an applicant may be denied approval for training pursuant to section 60-185. The patrol may revoke a certificate of training if the holder fails to keep a certificate current by taking any additional training the patrol may require. The patrol may revoke a certificate of training if the patrol finds that the holder is incompetent. A rebuttable presumption of incompetence shall arise from a finding by the patrol or a court of competent jurisdiction that the holder of a certificate of training has issued a statement of inspection for a stolen vehicle. Any person who feels himself or herself aggrieved by the patrol's decision to revoke a certificate may appeal such decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2005, LB 276, § 86.

Cross References

Administrative Procedure Act, see section 84-920.

60-187 Vehicle identification inspections; attendance at training; restriction.

No individual, other than a peace officer, shall attend training for inspections funded under the Nebraska State Patrol Cash Fund unless such individual has been designated by a sheriff and approved by the patrol.

Source: Laws 2005, LB 276, § 87.

60-188 Vehicle identification inspections; restriction on authority to inspect.

A holder of a certificate of training who is an employee of a licensee as determined by the department shall not inspect any vehicle which is not owned by his or her sponsoring licensee. A holder of a certificate of training who is a licensee shall not inspect any vehicle which he or she does not own.

Source: Laws 2005, LB 276, § 88.

60-189 Vehicle identification inspections; superintendent; duty.

The superintendent shall, from time to time, provide each county clerk or designated county official and each sheriff with a list of persons holding then current certificates of training.

Source: Laws 2005, LB 276, § 89.

60-190 Odometers; unlawful acts; exceptions.

It shall be unlawful for any person to:

(1) Knowingly tamper with, adjust, alter, change, disconnect, or fail to connect an odometer of a motor vehicle, or cause any of the foregoing to occur, to reflect a mileage different than has actually been driven by such motor vehicle except as provided in section 60-191;

(2) With intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer is disconnected or nonfunctional; or

(3) Advertise for sale, sell, use, or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than that actually driven.

Sections 60-190 to 60-196 shall not apply to gross-rated motor vehicles of more than sixteen thousand pounds.

Source: Laws 2005, LB 276, § 90.

60-191 Odometers; repaired or replaced; notice.

If any odometer is repaired or replaced, the reading of the repaired or replaced odometer shall be set at the reading of the odometer repaired or replaced immediately prior to repair or replacement and the adjustment shall not be deemed a violation of section 60-190, except that when the repaired or replaced odometer is incapable of registering the same mileage as before such repair or replacement, the repaired or replaced odometer shall be adjusted to read zero and a notice in writing on a form prescribed by the department shall be attached to the left door frame of the motor vehicle, or in the case of a motorcycle, to the frame of the motorcycle, by the owner or his or her agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced and any removal or alteration of such notice so affixed shall be deemed a violation of section 60-190.

Source: Laws 2005, LB 276, § 91.

60-192 Odometers; transferor; statement; contents.

The transferor of any motor vehicle of an age of less than ten years, which was equipped with an odometer by the manufacturer, shall provide to the transferee a statement, signed by the transferor, setting forth: (1) The mileage on the odometer at the time of transfer; and (2)(a) a statement that, to the transferor's best knowledge, such mileage is that actually driven by the motor vehicle, (b) a statement that the transferor has knowledge that the mileage shown on the odometer is in excess of the designated mechanical odometer limit, or (c) a statement that the odometer reading does not reflect the actual mileage and should not be relied upon because the transferor has knowledge that the odometer reading differs from the actual mileage and that the difference is greater than that caused by odometer calibration error. If a discrepancy exists between the odometer reading and the actual mileage, a warning notice to alert the transferee shall be included with the statement. The transferor shall retain a true copy of such statement for a period of five years from the date of the transaction.

Source: Laws 2005, LB 276, § 92.

60-193 Odometers; application for certificate of title; statement required.

The statement required by section 60-192 shall be on a form prescribed by the department or shall appear on the certificate of title. Such statement shall be submitted with the application for certificate of title unless the statement appears on the certificate of title being submitted with the application. The statement required by section 60-192 shall appear on the new certificate of title issued in the name of the transferee. No certificate of title shall be issued for a motor vehicle unless the application is accompanied by such statement or unless the information required by such statement appears on the certificate of title being submitted with the application.

Source: Laws 2005, LB 276, § 93; Laws 2006, LB 663, § 20.

60-194 Odometers; motor vehicle dealer; duties; violation; effect.

No licensed motor vehicle dealer shall have in his or her possession as inventory for sale any used motor vehicle of an age of less than twenty-five years for which the dealer does not have in his or her possession the transferor's statement required by section 60-192 unless a certificate of title has been issued for such motor vehicle in the name of the dealer. Violation of sections 60-190 to 60-196 shall be grounds for suspension or revocation of a motor vehicle dealer's license under the Motor Vehicle Industry Regulation Act.

Source: Laws 2005, LB 276, § 94; Laws 2010, LB816, § 6.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-195 Odometers; motor vehicle dealer; not guilty of violation; conditions.

A licensed motor vehicle dealer reassigning a certificate of title shall not be guilty of a violation of sections 60-190 to 60-196 if such dealer has in his or her possession the transferor's statement and if he or she has no knowledge that the statement is false and that the odometer does not reflect the mileage actually driven by the motor vehicle.

Source: Laws 2005, LB 276, § 95.

60-196 Odometers; retention of statement; violation; penalty.

Any transferor who does not retain a true copy of the odometer statement for a period of five years from the date of the transaction as required by section 60-192 shall be guilty of a Class V misdemeanor. Any person who violates any other provision of sections 60-190 to 60-196 shall be guilty of a Class IV felony.

Source: Laws 2005, LB 276, § 96.

60-197 Certificates, statements, notations, rules, regulations, and orders under prior law; effect.

(1) The repeal of Chapter 60, article 1, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Certificate of Title Act is not intended to affect the validity of manufacturer's or importer's certificates, certificates of title of any kind, odometer statements, or security interests or liens in existence on such date. All such certificates, statements, and notations are valid under the Motor Vehicle Certificate of Title Act as if issued or made under such act.

(2) The repeal of Chapter 60, article 1, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Certificate of Title Act is not intended to affect the validity of certificates of training for inspections in existence on such date. All such certificates are valid under the Motor Vehicle Certificate of Title Act as if issued under such act.

(3) The rules, regulations, and orders of the Director of Motor Vehicles and the Department of Motor Vehicles issued under Chapter 60, article 1, shall remain in effect as if issued under the Motor Vehicle Certificate of Title Act unless changed or eliminated by the director or the department to the extent such power is statutorily granted to the director and department.

Source: Laws 2005, LB 276, § 97.

ARTICLE 3
MOTOR VEHICLE REGISTRATION

Section

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; Laws 2010, LB650, § 20.
Operative date January 1, 2011.

60-302 Definitions, where found.

For purposes of the Motor Vehicle Registration Act, unless the context otherwise requires, the definitions found in sections 60-303 to 60-360 shall be used.

Source: Laws 2005, LB 274, § 2; Laws 2007, LB286, § 21; Laws 2008, LB756, § 6; Laws 2010, LB650, § 21.
Operative date January 1, 2011.

60-303 Agricultural floater-spreader implement, defined.

Agricultural floater-spreader implement means self-propelled equipment which is designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops and which has a gross laden weight of forty-eight thousand pounds or less and is equipped with floatation tires.

Source: Laws 2005, LB 274, § 3.

60-304 Agricultural products, defined.

Agricultural products means field crops and horticultural, viticultural, forestry, nut, dairy, livestock, poultry, bee, and farm products, including sod grown on the land owned or rented by the farmer, and the byproducts derived from any of them.

Source: Laws 2005, LB 274, § 4.

60-305 All-terrain vehicle, defined.

All-terrain vehicle means any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of nine hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control.

Source: Laws 2005, LB 274, § 5.

60-306 Alternative fuel, defined.

Alternative fuel has the same meaning as in section 66-686.

Source: Laws 2005, LB 274, § 6.

60-307 Ambulance, defined.

Ambulance means any privately or publicly owned motor vehicle that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland transportation of patients upon the highways in this state or any other motor vehicle used for such purposes but does not include or mean any motor vehicle owned or operated under the direct control of an agency of the United States Government.

Source: Laws 2005, LB 274, § 7.

60-308 Apportionable vehicle, defined.

(1) Apportionable vehicle means any motor vehicle or trailer used or intended for use in two or more member jurisdictions that allocate or proportionally register motor vehicles or trailers and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property.

(2) Apportionable vehicle does not include any recreational vehicle, motor vehicle displaying restricted plates, city pickup and delivery vehicle, bus used in the transportation of chartered parties, or government-owned motor vehicle.

(3) An apportionable vehicle that is a power unit shall (a) have two axles and a gross vehicle weight or registered gross vehicle weight in excess of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms, (b) have three or more axles, regardless of weight, or (c) be used in combination when the weight of such combination exceeds twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms gross vehicle weight. Vehicles or combinations of vehicles having a gross vehicle weight of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms or less and two-axle vehicles and buses used in the transportation of chartered parties may be proportionally registered at the option of the registrant.

Source: Laws 2005, LB 274, § 8; Laws 2007, LB286, § 22.

60-309 Assembled vehicle, defined.

Assembled vehicle means a motor vehicle or trailer that is materially altered from its construction by the removal, addition, or substitution of new or used major component parts. Its make shall be assembled, and its model year shall be the year in which the motor vehicle or trailer was assembled. Assembled vehicle also includes a specially constructed vehicle.

Source: Laws 2005, LB 274, § 9.

60-310 Automobile liability policy, defined.

Automobile liability policy means liability insurance written by an insurance carrier duly authorized to do business in this state protecting other persons from damages for liability on account of accidents occurring subsequent to the effective date of the insurance arising out of the ownership of a motor vehicle (1) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (2) subject to the limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of other persons in any one accident. An automobile liability policy shall not exclude liability coverage under the policy solely because the injured person making a claim is the named insured in the policy or residing in the household with the named insured.

Source: Laws 2005, LB 274, § 10.

60-311 Base jurisdiction, defined.

Base jurisdiction means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where miles or

kilometers are accrued by the fleet, and where operational records of such fleet are maintained or can be made available.

Source: Laws 2005, LB 274, § 11; Laws 2006, LB 853, § 1; Laws 2007, LB239, § 1; Laws 2008, LB756, § 7.

60-312 Boat dealer, defined.

Boat dealer means a person engaged in the business of buying, selling, or exchanging boats at retail who has a principal place of business for such purposes in this state.

Source: Laws 2005, LB 274, § 12.

60-313 Bus, defined.

Bus means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Source: Laws 2005, LB 274, § 13.

60-314 Cabin trailer, defined.

Cabin trailer means any trailer designed for living quarters and for being towed by a motor vehicle and not exceeding one hundred two inches in width, forty feet in length, or thirteen and one-half feet in height, except as provided in subdivision (2)(k) of section 60-6,288.

Source: Laws 2005, LB 274, § 14.

60-315 Collector, defined.

Collector means the owner of one or more historical vehicles who collects, purchases, acquires, trades, or disposes of such historical vehicles or parts thereof for his or her own use in order to preserve, restore, and maintain a historical vehicle or vehicles for hobby purposes.

Source: Laws 2005, LB 274, § 15.

60-316 Commercial motor vehicle, defined.

Commercial motor vehicle means any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and does not include farm trucks.

Source: Laws 2005, LB 274, § 16.

60-317 Commercial trailer, defined.

Commercial trailer means any trailer or semitrailer which has a gross weight, including load thereon, of more than nine thousand pounds and which is designed, used, or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property. Commercial trailer does not include cabin trailers, farm trailers, fertilizer trailers, or utility trailers.

Source: Laws 2005, LB 274, § 17.

60-318 Current model year vehicle, defined.

Current model year vehicle means a motor vehicle or trailer for which the model year as designated by the manufacturer corresponds to the calendar year.

Source: Laws 2005, LB 274, § 18.

60-319 Department, defined.

Department means the Department of Motor Vehicles.

Source: Laws 2005, LB 274, § 19.

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.

60-321 Director, defined.

Director means the Director of Motor Vehicles.

Source: Laws 2005, LB 274, § 21.

60-322 Electric personal assistive mobility device, defined.

Electric personal assistive mobility device means a self-balancing, two-non-tandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

Source: Laws 2005, LB 274, § 22.

60-323 Evidence of insurance, defined.

Evidence of insurance means evidence of a current and effective automobile liability policy.

Source: Laws 2005, LB 274, § 23.

60-324 Farm trailer, defined.

Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services. Farm trailer does not include a trailer so used when attached to a farm tractor.

Source: Laws 2005, LB 274, § 24; Laws 2007, LB286, § 23.

60-325 Farm truck, defined.

Farm truck means a truck or sport utility vehicle, including any combination of a truck, truck-tractor, or sport utility vehicle, and a trailer or semitrailer, of a farmer or rancher (1) used exclusively to carry a farmer's or rancher's own supplies, farm equipment, and household goods to or from the owner's farm or ranch, (2) used by the farmer or rancher to carry his or her own agricultural products to or from storage or market, (3) used by a farmer or rancher in exchange of services in such hauling of supplies or agricultural products, or (4) used occasionally to carry camper units, to tow boats or cabin trailers, or to carry or tow museum pieces or historical vehicles, without compensation, to events for public display or educational purposes.

Source: Laws 2005, LB 274, § 25; Laws 2007, LB286, § 24.

60-326 Fertilizer trailer, defined.

Fertilizer trailer means any trailer, including gooseneck applicators or trailers, designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and having a gross weight, including load thereon, of twenty thousand pounds or less.

Source: Laws 2005, LB 274, § 26.

60-327 Film vehicle, defined.

Film vehicle means any motor vehicle or trailer used exclusively by a nonresident production company temporarily on location in Nebraska producing a feature film, television commercial, documentary, or industrial or educational videotape production.

Source: Laws 2005, LB 274, § 27.

60-328 Finance company, defined.

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.

Source: Laws 2005, LB 274, § 28.

60-329 Fleet, defined.

Fleet means one or more apportionable vehicles.

Source: Laws 2005, LB 274, § 29.

60-330 Gross vehicle weight, defined.

Gross vehicle weight means the sum of the empty weights of a truck or truck-tractor and the empty weights of any trailer, semitrailer, or combination thereof with which the truck or truck-tractor 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.

Source: Laws 2005, LB 274, § 30.

60-331 Gross vehicle weight rating, defined.

Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle or trailer.

Source: Laws 2005, LB 274, § 31.

60-332 Highway, defined.

Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Source: Laws 2005, LB 274, § 32.

60-333 Historical vehicle, defined.

Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

Source: Laws 2005, LB 274, § 33; Laws 2006, LB 663, § 22; Laws 2007, LB286, § 25.

60-334 Injurisdiction distance, defined.

Injurisdiction distance means total miles or kilometers operated (1) in the State of Nebraska during the preceding year by the motor vehicle or vehicles registered and licensed for fleet operation and (2) in noncontracting reciprocity jurisdictions by fleet vehicles that are base-plated in Nebraska.

Source: Laws 2005, LB 274, § 34.

60-334.01 International Registration Plan, defined.

International Registration Plan means the International Registration Plan adopted by International Registration Plan, Inc.

Source: Laws 2008, LB756, § 8.

60-335 Kit vehicle, defined.

Kit vehicle means a motor vehicle or trailer assembled by a person other than a generally recognized manufacturer of motor vehicles or trailers by the use of a replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin. Kit vehicle does not include glider kits.

Source: Laws 2005, LB 274, § 35.

60-336 Local truck, defined.

Local truck means a truck and combinations of trucks, truck-tractors, or trailers operated solely within an incorporated city or village or within ten miles of the corporate limits of the city or village in which they are owned, operated, and registered.

Source: Laws 2005, LB 274, § 36.

60-336.01 Low-speed vehicle, defined.

Low-speed vehicle means a vehicle that (1) cannot travel more than twenty-five miles per hour on a paved, level surface, (2) complies with 49 C.F.R. part 571, as such part existed on January 1, 2007, or (3) is designated by the manufacturer as an off-road or low-speed vehicle.

Source: Laws 2007, LB286, § 26.

60-337 Minibike, defined.

Minibike means a two-wheel motor vehicle which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel motor vehicle primarily designed by the manufacturer for off-road use only. Minibike shall not include an electric personal assistive mobility device.

Source: Laws 2005, LB 274, § 37.

60-337.01 Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB650, § 22.
Operative date January 1, 2011.

60-338 Moped, defined.

Moped means a bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than thirty miles per hour on level ground.

Source: Laws 2005, LB 274, § 38.

60-339 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction

and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) low-speed vehicles.

Source: Laws 2005, LB 274, § 39; Laws 2007, LB286, § 27; Laws 2010, LB650, § 23.
Operative date January 1, 2011.

60-340 Motorcycle, defined.

Motorcycle means any motor vehicle having a seat or saddle for use of the operator and designed to travel on not more than three wheels in contact with the ground.

Source: Laws 2005, LB 274, § 40.

60-341 Noncontracting reciprocity jurisdiction, defined.

Noncontracting reciprocity jurisdiction means any jurisdiction which is not a party to any type of contracting agreement between the State of Nebraska and one or more other jurisdictions for registration purposes on commercial motor vehicles or trailers and, as a condition to operate on the highways of that jurisdiction, (1) does not require any type of motor vehicle or trailer registration or allocation of motor vehicles or trailers for registration purposes or (2) does not impose any charges based on miles operated, other than those that might be assessed against fuel consumed in that jurisdiction, on any motor vehicles or trailers which are part of a Nebraska-based fleet.

Source: Laws 2005, LB 274, § 41.

60-342 Owner, defined.

Owner means a person, firm, or corporation which holds a legal title of a motor vehicle or trailer. If (1) a motor vehicle or trailer is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, (2) a motor vehicle or trailer is subject to a lease of thirty days or more with an immediate right of possession vested in the lessee, or (3) a mortgagor of a motor vehicle or trailer is entitled to possession, then such conditional vendee, lessee, or mortgagor shall be deemed the owner for purposes of the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 42; Laws 2006, LB 853, § 2; Laws 2007, LB239, § 2; Laws 2008, LB756, § 9.

60-343 Park, defined.

Park means to stop a motor vehicle or trailer for any length of time, whether occupied or unoccupied.

Source: Laws 2005, LB 274, § 43.

60-344 Parts vehicle, defined.

Parts vehicle means a motor vehicle or trailer generally in nonoperable condition which is owned by a collector to furnish parts that are usually not

obtainable from normal sources, thus enabling a collector to preserve, restore, and maintain a historical vehicle.

Source: Laws 2005, LB 274, § 44.

60-345 Passenger car, defined.

Passenger car means a motor vehicle designed and used to carry ten passengers or less and not used for hire. Passenger car may include a sport utility vehicle.

Source: Laws 2005, LB 274, § 45; Laws 2007, LB286, § 28.

60-346 Proof of financial responsibility, defined.

Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (1) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (2) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

Source: Laws 2005, LB 274, § 46.

60-347 Recreational vehicle, defined.

Recreational vehicle means a motor vehicle designed for living quarters.

Source: Laws 2005, LB 274, § 47.

60-348 Semitrailer, defined.

Semitrailer means any trailer so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

Source: Laws 2005, LB 274, § 48.

60-349 Situs, defined.

Situs means the tax district where the motor vehicle or trailer is stored and kept for the greater portion of the calendar year. For a motor vehicle or trailer used or owned by a student, the situs is at the place of residence of the student if different from the place at which he or she is attending school.

Source: Laws 2005, LB 274, § 49.

60-350 Snowmobile, defined.

Snowmobile means a self-propelled vehicle designed to travel on snow or ice or a natural terrain steered by wheels, skis, or runners and propelled by a belt-driven track with or without steel cleats.

Source: Laws 2005, LB 274, § 50.

60-351 Specially constructed vehicle, defined.

Specially constructed vehicle means a motor vehicle or trailer which was not originally constructed under a distinctive name, make, model, or type by a

manufacturer of motor vehicles or trailers. Specially constructed vehicle includes kit vehicle.

Source: Laws 2005, LB 274, § 51.

60-351.01 Sport utility vehicle, defined.

Sport utility vehicle means a high-performance motor vehicle weighing six thousand pounds or less designed to carry ten passengers or less or designated as a sport utility vehicle by the manufacturer.

Source: Laws 2007, LB286, § 29.

60-352 Suspension of operator's license, defined.

Suspension of operator's license means the temporary withdrawal by formal action of the department of a person's motor vehicle operator's license for a period specifically designated by the department, if any, and until compliance with all conditions for reinstatement.

Source: Laws 2005, LB 274, § 52.

60-353 Total fleet distance, defined.

Total fleet distance means the distance traveled by a fleet in all jurisdictions during the preceding year.

Source: Laws 2005, LB 274, § 53.

60-354 Trailer, defined.

Trailer means any device without motive power designed for carrying persons or property and being towed by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Source: Laws 2005, LB 274, § 54.

60-355 Transporter, defined.

Transporter means any person lawfully engaged in the business of transporting motor vehicles or trailers not his or her own solely for delivery thereof (1) by driving singly, (2) by driving in combinations by the towbar, fullmount, or saddlemount method or any combination thereof, or (3) when a truck or truck-tractor tows a trailer.

Source: Laws 2005, LB 274, § 55; Laws 2007, LB286, § 30.

60-356 Truck, defined.

Truck means a motor vehicle that is designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

Source: Laws 2005, LB 274, § 56; Laws 2007, LB286, § 31.

60-357 Truck-tractor, defined.

Truck-tractor means any motor vehicle designed and used primarily for towing other motor vehicles or trailers and not so constructed as to carry a load other than a part of the weight of the motor vehicle or trailer and load being towed.

Source: Laws 2005, LB 274, § 57.

60-358 Utility trailer, defined.

Utility trailer means a trailer having a gross weight, including load thereon, of nine thousand pounds or less.

Source: Laws 2005, LB 274, § 58.

60-358.01 Utility-type vehicle, defined.

(1) Utility-type vehicle means any motorized off-highway vehicle which (a) is not less than forty-eight inches nor more than seventy-four inches in width, (b) is not more than one hundred thirty-five inches, including the bumper, in length, (c) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (d) travels on four or more low-pressure tires, and (e) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.

(2) Utility-type vehicle does not include golf carts or low-speed vehicles.

Source: Laws 2010, LB650, § 24.
Operative date January 1, 2011.

60-359 Well-boring apparatus, defined.

Well-boring apparatus means trucks, truck-tractors, or combinations of trucks or truck-tractors and trailers which are not for hire and are used exclusively to travel to and from the well site including (1) the well rig truck, (2) the boom truck, (3) the water tank truck, and (4) such other devices as are used exclusively for transporting well-boring apparatus to and from the well site including the drill stem, casing, drilling mud, pumps and related equipment, and well-site excavating machinery or equipment.

Source: Laws 2005, LB 274, § 59.

60-360 Well-servicing equipment, defined.

Well-servicing equipment means equipment used for the (1) care and replacement of down-hole production equipment and (2) restimulation of a well.

Source: Laws 2005, LB 274, § 60.

60-361 Department; powers.

The department may administer and enforce the International Registration Plan Act and the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 61.

Cross References

International Registration Plan Act, see section 60-3,192.

60-362 Registration required; presumption.

Unless otherwise expressly provided, no motor vehicle shall be operated or parked and no trailer shall be towed or parked on the highways of this state unless the motor vehicle or trailer is registered in accordance with the Motor Vehicle Registration Act. There shall be a rebuttable presumption that any motor vehicle or trailer stored and kept more than thirty days in the state is being operated, parked, or towed on the highways of this state, and such motor vehicle or trailer shall be registered in accordance with the act, from the date of title of the motor vehicle or trailer or, if no transfer in ownership of the motor

vehicle or trailer has occurred, from the expiration of the last registration period for which the motor vehicle or trailer was registered. No motor vehicle or trailer shall be eligible for initial registration in this state, except a motor vehicle or trailer registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198, unless the Motor Vehicle Certificate of Title Act has been complied with insofar as the motor vehicle or trailer is concerned.

Source: Laws 2005, LB 274, § 62; Laws 2006, LB 765, § 5.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.

60-363 Registration certificate; duty to carry, exception.

No person shall operate or park a motor vehicle or tow or park a trailer on the highways unless such motor vehicle or trailer at all times carries in or upon it, subject to inspection by any peace officer, the registration certificate issued for it, except fertilizer trailers as defined in section 60-326. The registration certificate for a fertilizer trailer shall be kept at the principal place of business of the owner of the fertilizer trailer. In the case of a motorcycle, the registration certificate shall be carried either in plain sight, affixed to the motorcycle, or in the tool bag or some convenient receptacle attached to the motorcycle.

Source: Laws 2005, LB 274, § 63; Laws 2010, LB725, § 1.
Effective date July 15, 2010.

60-364 Transfer of vehicle; effect on registration.

Upon the transfer of ownership of any motor vehicle or trailer, its registration shall expire.

Source: Laws 2005, LB 274, § 64.

60-365 Operation of vehicle without registration; limitation; proof of ownership.

Any person purchasing a motor vehicle or trailer in this state other than from a licensed dealer in motor vehicles or trailers shall not operate or tow such motor vehicle or trailer in this state without registration except as provided in this section. Such purchaser may operate or tow such motor vehicle or trailer without registration for a period not to exceed thirty days. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a certificate showing the date of transfer or the certificate of title to such motor vehicle or trailer with assignment thereof duly executed. When such motor vehicle or trailer is purchased from a nonresident, the person in charge of such motor vehicle or trailer shall present upon demand proper evidence of ownership from the state where such motor vehicle or trailer was purchased.

Source: Laws 2005, LB 274, § 65; Laws 2008, LB756, § 11.

60-366 Nonresident owner; registration; when; reciprocity.

(1) Any nonresident owner who desires to register a motor vehicle or trailer in this state shall register in the county where the motor vehicle or trailer is domiciled or where the owner conducts a bona fide business.

(2) A nonresident owner, except as provided in subsection (3) of this section, owning any motor vehicle or trailer which has been properly registered in the state, country, or other place of which the owner is a resident, and which at all times, when operated or towed in this state, has displayed upon it the license plate or plates issued for such motor vehicle or trailer in the place of residence of such owner, may operate or permit the operation or tow or permit the towing of such motor vehicle or trailer within the state without registering such motor vehicle or trailer or paying any fees to this state.

(3) Any nonresident owner gainfully employed or present in this state, operating a motor vehicle or towing a trailer in this state, shall register such motor vehicle or trailer in the same manner as a Nebraska resident, after thirty days of continuous employment or presence in this state, unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state. Any nonresident owner who operates a motor vehicle or tows a trailer in this state for thirty or more continuous days shall register such motor vehicle or trailer in the same manner as a Nebraska resident unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state.

Source: Laws 2005, LB 274, § 66.

60-367 Nonresident; applicability of act.

The provisions of the Motor Vehicle Registration Act relative to registration and display of registration numbers do not apply to a motor vehicle or trailer owned by a nonresident of this state, other than a foreign corporation doing business in this state, if the owner thereof has complied with the provisions of the law of the foreign country, state, territory, or federal district of his or her residence relative to registration of motor vehicles or trailers and the display of registration numbers thereon and conspicuously displays his or her registration numbers as required thereby.

Source: Laws 2005, LB 274, § 67.

60-368 Nonresident; nonresident licensed vehicles hauling grain or seasonally harvested products; reciprocity.

Sections 60-367 and 60-3,112 shall be operative as to motor vehicles or trailers owned by a nonresident of this state only to the extent that under the laws of the foreign country, state, territory, or federal district of his or her residence, like exemptions and privileges are guaranteed to motor vehicles or trailers duly registered under the laws of and owned by residents of this state or to a motor vehicle or trailer duly licensed in the state of residence and operated by a nonresident agricultural worker, certified by the Department of Labor, as engaged in temporary agricultural employment in this state, for a period of not to exceed sixty days.

Source: Laws 2005, LB 274, § 68.

60-369 Operation of vehicle without registration; purchase from state or political subdivision; proof of ownership.

Any purchaser of a motor vehicle or trailer from the State of Nebraska or any political subdivision of the state may operate such motor vehicle or tow such trailer without registration for a period of thirty days. Upon demand of proper

authority, satisfactory proof of ownership, which shall be either the certificate of title to such motor vehicle or trailer with assignment thereof duly executed or a bill of sale which describes such motor vehicle or trailer with identification number, shall be presented by the person in charge of such motor vehicle or trailer for examination.

Source: Laws 2005, LB 274, § 69.

60-370 County number system; alphanumeric system.

(1)(a) Each county in the state shall use the county number system except as otherwise provided in this section.

(b) Registration of motor vehicles or trailers as farm trucks or farm trailers shall be by the county number system.

(2) Counties using the county number system shall show on motor vehicles or trailers licensed therein a county number on the license plate preceding a dash which shall then be followed by the registration number assigned to the motor vehicle or trailer. The county numbers assigned to the counties in Nebraska shall be as follows:

No.	Name of County	No.	Name of County
1	Douglas	2	Lancaster
3	Gage	4	Custer
5	Dodge	6	Saunders
7	Madison	8	Hall
9	Buffalo	10	Platte
11	Otoe	12	Knox
13	Cedar	14	Adams
15	Lincoln	16	Seward
17	York	18	Dawson
19	Richardson	20	Cass
21	Scotts Bluff	22	Saline
23	Boone	24	Cuming
25	Butler	26	Antelope
27	Wayne	28	Hamilton
29	Washington	30	Clay
31	Burt	32	Thayer
33	Jefferson	34	Fillmore
35	Dixon	36	Holt
37	Phelps	38	Furnas
39	Cheyenne	40	Pierce
41	Polk	42	Nuckolls
43	Colfax	44	Nemaha
45	Webster	46	Merrick
47	Valley	48	Red Willow
49	Howard	50	Franklin
51	Harlan	52	Kearney
53	Stanton	54	Pawnee
55	Thurston	56	Sherman
57	Johnson	58	Nance
59	Sarpy	60	Frontier
61	Sheridan	62	Greeley
63	Boyd	64	Morrill
65	Box Butte	66	Cherry
67	Hitchcock	68	Keith
69	Dawes	70	Dakota

71	Kimball	72	Chase
73	Gosper	74	Perkins
75	Brown	76	Dundy
77	Garden	78	Deuel
79	Hayes	80	Sioux
81	Rock	82	Keya Paha
83	Garfield	84	Wheeler
85	Banner	86	Blaine
87	Logan	88	Loup
89	Thomas	90	McPherson
91	Arthur	92	Grant
93	Hooker		

(3)(a) Except as provided in subdivision (1)(b) of this section, registration of motor vehicles or trailers in counties having a population of one hundred thousand inhabitants or more according to the most recent federal decennial census shall be by an alphanumeric system rather than by the county number system.

(b) Except as provided in subdivision (1)(b) of this section, registration of motor vehicles or trailers in all other counties shall be, at the option of each county board, by either the alphanumeric system or the county number system.

(c) Counties using the alphanumeric system shall show on the license plates of motor vehicles or trailers licensed therein a combination of three letters followed by a combination of three numerals. The department may adopt and promulgate rules and regulations creating alphanumeric distinctions on the license plates based upon the registration of the motor vehicle or trailer.

Source: Laws 2005, LB 274, § 70.

60-371 Exemption from civil liability.

The county and the county treasurer or designated county official and his or her employees or agents shall be exempt from all civil liability when carrying out powers and duties delegated under the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 71.

60-372 Vehicle titling and registration computer system; agent of county treasurer; appointment.

(1) Each county shall issue and file registration certificates using the vehicle titling and registration computer system prescribed by the department.

(2) The county treasurer or designated county official may appoint an agent to issue registration certificates and to accept the payment of taxes and fees as provided in the Motor Vehicle Registration Act, upon approval of the county board. The agent shall furnish a bond in such amount and upon such conditions as determined by the county board.

Source: Laws 2005, LB 274, § 72.

60-373 Operation of vehicle without registration; dealer; employee or agent; licensed manufacturer; conditions.

(1) Each licensed motor vehicle dealer or trailer dealer as defined in sections 60-1401.26 and 60-1401.37, respectively, doing business in this state, in lieu of registering each motor vehicle or trailer which such dealer owns of a type

otherwise required to be registered, or any full-time or part-time employee or agent of such dealer may, if the motor vehicle or trailer displays dealer number plates:

(a) Operate or tow the motor vehicle or trailer upon the highways of this state solely for purposes of transporting, testing, demonstrating, or use in the ordinary course and conduct of business as a motor vehicle or trailer dealer. Such use may include personal or private use by the dealer and personal or private use by any bona fide employee licensed pursuant to the Motor Vehicle Industry Regulation Act, if the employee can be verified by payroll records maintained at the dealership as ordinarily working more than thirty hours per week or fifteen hundred hours per year at the dealership;

(b) Operate or tow the motor vehicle or trailer upon the highways of this state for transporting industrial equipment held by the licensee for purposes of demonstration, sale, rental, or delivery; or

(c) Sell the motor vehicle or trailer.

(2) Each licensed manufacturer as defined in section 60-1401.24 which actually manufactures or assembles motor vehicles or trailers within this state, in lieu of registering each motor vehicle or trailer which such manufacturer owns of a type otherwise required to be registered, or any employee of such manufacturer may operate or tow the motor vehicle or trailer upon the highways of this state solely for purposes of transporting, testing, demonstrating to prospective customers, or use in the ordinary course and conduct of business as a motor vehicle or trailer manufacturer, upon the condition that any such motor vehicle or trailer display thereon, in the manner prescribed in section 60-3,100, dealer number plates as provided for in section 60-3,114.

(3) In no event shall such plates be used on motor vehicles or trailers hauling other than automotive or trailer equipment, complete motor vehicles, or trailers which are inventory of such licensed dealer or manufacturer unless there is issued by the department a special permit specifying the hauling of other products. This section shall not be construed to allow a dealer to operate a motor vehicle or trailer with dealer number plates for the delivery of parts inventory. A dealer may use such motor vehicle or trailer to pick up parts to be used for the motor vehicle or trailer inventory of the dealer.

Source: Laws 2005, LB 274, § 73; Laws 2010, LB816, § 7.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-374 Operation of vehicle without registration; prospective buyer; conditions; special permit; fee.

Motor vehicles or trailers owned by a dealer and bearing dealer number plates may be operated or towed upon the highways for demonstration purposes by any prospective buyer thereof for a period of forty-eight hours. Motor vehicles or trailers owned and held for sale by a dealer and bearing such dealer number plates may be operated or towed upon the highways for a period of forty-eight hours as service loaner vehicles by customers having their vehicles repaired by the dealer. Upon delivery of such motor vehicle or trailer to such prospective buyer for demonstration purposes or to a service customer, the dealer shall deliver to the prospective buyer or service customer a card or

certificate giving the name and address of the dealer, the name and address of the prospective buyer or service customer, and the date and hour of such delivery and the products to be hauled, if any, under a special permit. The special permit and card or certificate shall be in such form as shall be prescribed by the department and shall be carried by such prospective buyer or service customer while operating such motor vehicle or towing such trailer. The department shall charge ten dollars for each special permit issued under this section.

Source: Laws 2005, LB 274, § 74.

60-375 Operation of vehicle without registration; finance company; repossession plates; fee.

(1) A finance company which is licensed to do business in this state may, in lieu of registering each motor vehicle or trailer repossessed, upon the payment of a fee of ten dollars, make an application to the department for a repossession registration certificate and one repossession license plate. Additional pairs of repossession certificates and repossession license plates may be procured for a fee of ten dollars each. Repossession license plates may be used only for operating or towing motor vehicles or trailers on the highways for the purpose of repossession, demonstration, and disposal of such motor vehicles or trailers. The repossession certificate shall be displayed on demand for any motor vehicle or trailer which has a repossession license plate. A finance company shall be entitled to a dealer license plate only in the event such company is licensed as a motor vehicle dealer or trailer dealer under the Motor Vehicle Industry Regulation Act.

(2) Repossession license plates shall be prefixed with a large letter R and be serially numbered from 1 to distinguish them from each other. Such license plates shall be displayed only on the rear of a repossessed motor vehicle or trailer.

Source: Laws 2005, LB 274, § 75; Laws 2010, LB816, § 8.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-376 Operation of vehicle without registration; In Transit sticker; records required; proof of ownership.

Subject to all the provisions of law relating to motor vehicles and trailers not inconsistent with this section, any motor vehicle dealer or trailer dealer who is regularly engaged within this state in the business of buying and selling motor vehicles and trailers, who regularly maintains within this state an established place of business, and who desires to effect delivery of any motor vehicle or trailer bought or sold by him or her from the point where purchased or sold to points within or outside this state may, solely for the purpose of such delivery by himself or herself, his or her agent, or a bona fide purchaser, operate such motor vehicle or tow such trailer on the highways of this state without charge or registration of such motor vehicle or trailer. A sticker shall be displayed on the front and rear windows or the rear side windows of such motor vehicle, except a motorcycle, and displayed on the front and rear of each such trailer. On the sticker shall be plainly printed in black letters the words In Transit. One In Transit sticker shall be displayed on a motorcycle, which sticker may be one-

half the size required for other motor vehicles. Such stickers shall include a registration number, which registration number shall be different for each sticker or pair of stickers issued, and the contents of such sticker and the numbering system shall be as prescribed by the department. Each dealer issuing such stickers shall keep a record of the registration number of each sticker or pair of stickers on the invoice of such sale. Such sticker shall allow such owner to operate the motor vehicle or tow such trailer for a period of thirty days in order to effect proper registration of the new or used motor vehicle or trailer. When any person, firm, or corporation has had a motor vehicle or trailer previously registered and license plates assigned to such person, firm, or corporation, such owner may operate the motor vehicle or tow such trailer for a period of thirty days in order to effect transfer of plates to the new or used motor vehicle or trailer. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a duly executed bill of sale therefor or other satisfactory evidence of the right of possession by such person of such motor vehicle or trailer.

Source: Laws 2005, LB 274, § 76; Laws 2008, LB756, § 12.

60-377 Business of equipping, modifying, repairing, or detailing; registration and plates; fee.

Any person, firm, or corporation in this state engaged in the business of equipping, modifying, repairing, or detailing motor vehicles or trailers which are not registered and which are not owned by such person, firm, or corporation shall make an application to the department for a registration certificate and one license plate. Such application shall be accompanied by a fee of thirty dollars. Additional pairs of certificates and license plates may be procured for a fee of thirty dollars each. Such license plates shall be designed by the department and shall bear a mark and be serially numbered so as to be distinguished from each other. Such license plates may be used solely for the purpose of equipping, modifying, repairing, detailing, and delivering such motor vehicles or trailers. Upon demand of proper authorities, the operator of such motor vehicle shall present a written statement from the owner authorizing operation of such motor vehicle or towing such trailer.

Source: Laws 2005, LB 274, § 77.

60-378 Transporter plates; fee; records.

(1) Any transporter doing business in this state may, in lieu of registering each motor vehicle or trailer which such transporter is transporting, upon payment of a fee of ten dollars, apply to the department for a transporter's certificate and one transporter license plate. Additional pairs of transporter certificates and transporter license plates may be procured for a fee of ten dollars each. Transporter license plates shall be displayed (a) upon the motor vehicle or trailer being transported or (b) upon a properly registered truck or truck-tractor which is a work or service vehicle in the process of towing a trailer which is itself being delivered by the transporter, and such registered truck or truck-tractor shall also display a transporter plate upon the front thereof. The applicant for a transporter plate shall keep for six years a record of each motor vehicle or trailer transported by him or her under this section, and such record shall be available to the department for inspection. Each applicant

shall file with the department proof of his or her status as a bona fide transporter.

(2) Transporter license plates may be the same size as license plates issued for motorcycles, shall bear thereon a mark to distinguish them as transporter plates, and shall be serially numbered so as to distinguish them from each other. Such license plates may only be displayed upon the front of a driven motor vehicle of a lawful combination or upon the front of a motor vehicle driven singly or upon the rear of a trailer being towed.

Source: Laws 2005, LB 274, § 78; Laws 2007, LB286, § 32.

60-379 Boat dealer trailer plate; fee.

Any boat dealer when transporting a boat which is part of the inventory of the boat dealer on a trailer required to be registered may annually, in lieu of registering the trailer and upon application to the department and payment of a fee of ten dollars, obtain a certificate and a license plate. The plate may be displayed on any trailer owned by the boat dealer when the trailer is transporting such a boat. The license plate shall be of a type designed by the department and so numbered as to distinguish one plate from another.

Source: Laws 2005, LB 274, § 79.

60-380 Motor vehicle or trailer owned by dealer; presumption.

Any motor vehicle or trailer owned by a dealer licensed under the Motor Vehicle Industry Regulation Act and bearing other than dealer license plates shall be conclusively presumed not to be a part of the dealer's inventory and not for demonstration or sale and therefor not eligible for any exemption from taxes or fees applicable to motor vehicles or trailers with dealer license plates.

Source: Laws 2005, LB 274, § 80; Laws 2010, LB816, § 9.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-381 Manufacturer or dealer; branch offices; separate registration; dealer's plates; use.

Whenever a manufacturer or dealer licensed under the Motor Vehicle Industry Regulation Act maintains a branch or subagency, the manufacturer or dealer shall apply for a separate registration for such branch or subagency and shall pay therefor the fees provided in section 60-3,114 for the registration of motor vehicles or trailers owned by or under the control of the manufacturer or dealer, and the determination of the department upon the question whether any establishment constitutes a branch or subagency, within the intent of this section, shall be conclusive. No manufacturer, dealer, or employee of a manufacturer or dealer shall cause or permit the display or other use of any license plate or certificate of registration which has been issued to such manufacturer or dealer except upon motor vehicles or trailers owned by such manufacturer or dealer.

Source: Laws 2005, LB 274, § 81; Laws 2010, LB816, § 10.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-382 Nonresident owners; temporary permit; application; fee; certificate; contents.

(1) Any person, not a resident of this state, who is the owner of a motor vehicle or trailer required to be registered in this state or any other state may, for the sole purpose of delivering, or having delivered, such motor vehicle or trailer, to his or her home or place of business in another state, apply for and obtain a thirty-day license plate which shall allow such person or his or her agent or employee to operate such motor vehicle or trailer upon the highways under conditions set forth in subsection (2) of this section, without obtaining a certificate of title to such motor vehicle in this state.

(2) Applications for such thirty-day license plate shall be made to the county treasurer or designated county official of the county where such motor vehicle or trailer was purchased or acquired. Upon receipt of such application and payment of the fee of five dollars, the county treasurer or designated county official shall issue to such applicant a thirty-day license plate, which shall be devised by the director, and evidenced by the official certificate of the county treasurer or designated county official, which certificate shall state the name of the owner and operator of the motor vehicle or trailer so licensed, the description of such motor vehicle or trailer, the place in Nebraska where such motor vehicle or trailer was purchased or otherwise acquired, the place where delivery is to be made, and the time, not to exceed thirty days from date of purchase or acquisition of the motor vehicle or trailer, during which time such license plate shall be valid.

(3) Nonresident owner thirty-day license plates issued under this section shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

Source: Laws 2005, LB 274, § 82.

60-383 Film vehicles; registration; fees.

(1) A film vehicle, subject to approval by the Department of Economic Development, may be registered upon application to the Department of Motor Vehicles. The Department of Motor Vehicles may provide distinctive license plates for such film vehicles. Such license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

(2) The registration for film vehicles shall be issued only with the payment of the fees required by section 60-3,102 and this section. The registration shall be valid for six months from the date of issuance and may be renewed for a period not to exceed three months upon payment of the renewal fee specified in this section.

(3) The six-month registration fee for a film vehicle shall be fifty dollars for a film vehicle with a gross vehicle weight of sixteen thousand pounds or less and one hundred fifty dollars for a film vehicle with a gross vehicle weight of more than sixteen thousand pounds. The three-month renewal fee shall be twenty-five dollars. All fees collected by the Department of Motor Vehicles under this

section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2005, LB 274, § 83.

60-383.01 Minitruck; registration; fee.

For the registration of every minitruck, the fee shall be fifteen dollars.

Source: Laws 2010, LB650, § 27.
Operative date January 1, 2011.

60-384 Nonresident carnival operator; thirty-day permit; fees; reciprocity.

Upon receipt of an application duly verified, a nonresident carnival operator shall be issued a thirty-day carnival operators' permit to operate in Nebraska upon the payment of the following fees: For the gross vehicle weight of sixteen thousand pounds or less, ten dollars; for more than sixteen thousand pounds and not more than twenty-eight thousand pounds, fifteen dollars; for more than twenty-eight thousand pounds and not more than forty thousand pounds, twenty dollars; and for more than forty thousand pounds and not more than seventy-three thousand two hundred eighty pounds, twenty-five dollars, except that such a permit shall be issued only to out-of-state operators when the jurisdiction in which the motor vehicle and trailer is registered grants reciprocity to Nebraska. Such fees shall be paid to the county treasurer or designated county official or persons designated by the director, who shall have authority to issue the permit when the applicant is eligible and pays the required fee. All fees collected under the provisions of this section shall be paid into the state treasury and by the State Treasurer credited to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 84.

60-385 Application; situs.

Every owner of a motor vehicle or trailer required to be registered shall make application for registration to the county treasurer or designated county official of the county in which the motor vehicle or trailer has situs. The application shall be by any means designated by the department. A salvage branded certificate of title and a nontransferable certificate of title provided for in section 60-170 shall not be valid for registration purposes.

Source: Laws 2005, LB 274, § 85; Laws 2006, LB 765, § 6; Laws 2007, LB286, § 33.

60-386 Application; contents.

Each new application shall contain, in addition to other information as may be required by the department, the name and residential and mailing address of the applicant and a description of the motor vehicle or trailer, including the color, the manufacturer, the identification number, and the weight of the motor vehicle or trailer required by the Motor Vehicle Registration Act. With the application the applicant shall pay the proper registration fee and shall state whether the motor vehicle is propelled by alternative fuel and, if alternative fuel, the type of fuel. The form shall also contain a notice that bulk fuel purchasers may be subject to federal excise tax liability. The department shall prescribe a form, containing the notice, for supplying the information for motor vehicles to be registered. The county treasurer or designated county official

shall include the form in each mailing made pursuant to section 60-3,186. The county treasurer or designated county official or his or her agent shall notify the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue whenever a motor vehicle powered by an alternative fuel is registered. The notification shall include the name and address of the registrant, the date of registration, the type of motor vehicle registered, and the type of alternative fuel used to propel the motor vehicle as indicated on the registration application.

Source: Laws 2005, LB 274, § 86.

60-387 Proof of financial responsibility required.

An application for registration of a motor vehicle shall be accompanied by proof of financial responsibility or evidence of insurance covering the motor vehicle. Proof of financial responsibility shall be evidenced by a copy of proof of financial responsibility filed pursuant to subdivision (2), (3), or (4) of section 60-528 bearing the seal of the department. Evidence of insurance shall give the effective dates of the automobile liability policy, which dates shall be evidence that the coverage is in effect on and following the date of registration, and shall designate, by explicit description or by appropriate reference, all motor vehicles covered. Evidence of insurance in the form of a certificate of insurance for fleet vehicles may include, as an appropriate reference, a designation that the insurance coverage is applicable to all vehicles owned by the named insured, or wording of similar effect, in lieu of an explicit description. Proof of financial responsibility also may be evidenced by (1) a check by the department or its agents of the motor vehicle insurance data base created under section 60-3,136 or (2) any other automated or electronic means as prescribed or developed by the department. For purposes of this section, fleet means a group of at least five vehicles that belong to the same owner.

Source: Laws 2005, LB 274, § 87; Laws 2007, LB286, § 34.

60-388 Collection of taxes and fees required.

No county treasurer or designated county official shall receive or accept an application or registration fee or issue any registration certificate for any motor vehicle or trailer without collection of the taxes and the fees imposed in sections 60-3,185, 60-3,190, and 77-2703 and any other applicable taxes and fees upon such motor vehicle or trailer. If applicable, the applicant shall furnish proof 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 the Internal Revenue Code, 26 U.S.C. 4481.

Source: Laws 2005, LB 274, § 88.

60-389 Registration number; assignment.

Upon the filing of such application, the department shall, upon registration, assign to such motor vehicle or trailer a distinctive registration number in the form of a license plate. Upon sale or transfer of any such motor vehicle or trailer, such number may be canceled or may be reassigned to another motor vehicle or trailer, at the option of the department, subject to the provisions of the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 89.

60-390 Certificate of registration; contents.

The certificate of registration shall contain upon the face thereof the name of the registered owner of the motor vehicle or trailer, his or her residential mailing address, a description of the motor vehicle or trailer as set forth in the application for registration, and whether alternative fuel was used to propel the motor vehicle and, if so, the type of fuel. The certificate of registration shall have and contain the identical registration number denoted on the license plate in connection with which such certificate of registration is issued and shall be valid only for the registration period for which it is issued. On the back of the certificate, the certificate of registration shall include a statement in boldface print that an automobile liability policy or proof of financial responsibility is required in Nebraska. By paying the required registration fees, every person whose name appears on the registration of the motor vehicle or trailer certifies that a current and effective automobile liability policy or proof of financial responsibility will be maintained for the motor vehicle or trailer at the time of registration and while the motor vehicle or trailer is operated on a highway of this state and that he or she will also provide a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility for the motor vehicle or trailer upon demand.

Source: Laws 2005, LB 274, § 90.

60-391 Combined certificate and receipt for fees; county officials; reports; contents.

The county treasurer or designated county official shall issue a combined certificate and receipt for all fees received for the registration of motor vehicles or trailers to the applicant for registration and forward an electronic copy of the combined application and receipt to the department in a form prescribed by the department. Each county treasurer or designated county official shall make a report to the department of the number of original registrations of motor vehicles or trailers registered in the rural areas of the county and of the number of original registrations of motor vehicles or trailers registered in each incorporated city and village in the county during each month, on or before the twenty-fifth day of the succeeding month. The department shall prescribe the form of such report. When any county treasurer or designated county official fails to file such report, the department shall notify the county board of commissioners or supervisors of such county and the Director of Administrative Services who shall immediately suspend any payments to such county for highway purposes until the required reports are submitted.

Source: Laws 2005, LB 274, § 91.

60-392 Renewal of registration; license plates; validation decals; registration period; expiration.

(1) Registration may be renewed annually in a manner designated by the department and upon payment of the same fee as provided for the original registration. On making an application for renewal, the registration certificate for the preceding registration period or renewal notice or other evidence designated by the department shall be presented with the application. A person may renew his or her annual registration up to thirty days prior to the date of expiration.

(2) The certificate of registration and license plates issued by the department shall be valid during the registration period for which they are issued, and when validation decals issued pursuant to section 60-3,101 have been affixed to the license plates, the plates shall also be valid for the registration period designated by such validation decals. If a person renews his or her annual registration up to thirty days prior to the date of expiration, the registration shall be valid for such time period as well.

(3) The registration period for motor vehicles and trailers required to be registered as provided in section 60-362 shall expire on the first day of the month one year from the month of issuance, and renewal shall become due on such day and shall become delinquent on the first day of the following month.

(4) Subsections (1) through (3) of this section do not apply to dealer's license plates, repossession plates, and transporter plates as provided in sections 60-373, 60-375, 60-378, and 60-379, which plates shall be issued for a calendar year.

(5) The registration period for apportioned vehicles as provided in section 60-3,198 shall expire December 31 of each year and shall become delinquent February 1 of the following year.

Source: Laws 2005, LB 274, § 92; Laws 2006, LB 789, § 1.

60-393 Multiple vehicle registration.

Any owner who has two or more motor vehicles or trailers required to be registered under the Motor Vehicle Registration Act may register all such motor vehicles or trailers on a calendar-year basis or on an annual basis for the same registration period beginning in a month chosen by the owner. When electing to establish the same registration period for all such motor vehicles or trailers, the owner shall pay the registration fee, the motor vehicle tax imposed in section 60-3,185, and the motor vehicle fee imposed in section 60-3,190 on each motor vehicle for the number of months necessary to extend its current registration period to the registration period under which all such motor vehicles or trailers will be registered. Credit shall be given for registration paid on each motor vehicle or trailer when the motor vehicle or trailer has a later expiration date than that chosen by the owner except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. Thereafter all such motor vehicles or trailers shall be registered on an annual basis starting in the month chosen by the owner.

Source: Laws 2005, LB 274, § 93; Laws 2007, LB570, § 4.

60-394 Registration; certain name changes; fee.

Registration which is in the name of one spouse may be transferred to the other spouse for a fee of one dollar and fifty cents.

So long as one registered name on a registration of a noncommercial motor vehicle or trailer remains the same, other names may be deleted therefrom or new names added thereto for a fee of one dollar and fifty cents.

Source: Laws 2005, LB 274, § 94.

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.

60-396 Credit of fees; vehicle disabled or removed from service.

Whenever the registered owner files an application with the county treasurer or designated county official showing that a motor vehicle or trailer is disabled and has been removed from service, the registered owner may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of such registration certificate or certificates, license plates, or validation decals, then by making an affidavit to the county treasurer or designated county official of such disablement and removal from service, receive a credit for a portion of the registration fee from the fee deposited with the State Treasurer at the time of registration based upon the number of unexpired months remaining in the registration year except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. The owner shall also receive a credit for the unused portion of the motor vehicle tax and fee based upon the number of unexpired months remaining in the registration year. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer or designated county official shall forward the application and affidavit, if any, to the State Treasurer who shall determine the amount, if any, of the allowable credit for the registration fee and issue a credit certificate to the owner. For the motor vehicle tax and fee, the county treasurer or designated county official shall determine the amount, if any, of the allowable credit and issue a credit certificate to the owner. When such motor vehicle or trailer is removed from service within the same month in which it was registered, no credits shall be allowed for such month. The credits may be applied against taxes and fees for new or replacement motor vehicles or trailers incurred within one year after cancellation of registration of the motor vehicle or trailer for which the credits were allowed. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 96; Laws 2007, LB570, § 6.

60-397 Refund or credit; salvage branded certificate of title.

If a motor vehicle or trailer has a salvage branded certificate of title issued as a result of an insurance company acquiring the motor vehicle or trailer through a total loss settlement, the prior owner of the motor vehicle or trailer who is a party to the settlement may receive a refund or credit of unused fees and taxes by (1) filing an application with the county treasurer or designated county official within sixty days after the date of the settlement stating that title to the

motor vehicle or trailer was transferred as a result of the settlement and (2) returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of the registration certificate, license plates, or validation decals, filing an affidavit with the county treasurer or designated county official regarding the transfer of title due to the settlement and the unavailability of the certificate, license plates, or validation decals. The owner may receive a refund or credit of the registration fees and motor vehicle taxes and fees for the unexpired months remaining in the registration year determined based on the date when the motor vehicle or trailer was damaged and became unavailable for service. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer or designated county official shall refund the unused registration fees. If the motor vehicle or trailer was damaged and became unavailable for service during the same month in which it was registered, no refund or credit shall be allowed for such month. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 97; Laws 2007, LB286, § 36.

60-398 Nonresident; refund; when allowed.

A nonresident may, if he or she applies within ninety days from his or her original registration date and surrenders the registration certificate and license plates which were assigned to him or her, receive from the county treasurer or designated county official, or the department if registration was pursuant to section 60-3,198, a refund in the amount of fifty percent of the original license fee, fifty percent of the motor vehicle tax imposed in section 60-3,185, and fifty percent of the motor vehicle fee imposed in section 60-3,190, except that no refunds shall be made on any license surrendered after the ninth month of the registration period for which the motor vehicle or trailer was registered.

Source: Laws 2005, LB 274, § 98.

60-399 Display of plates; requirements.

(1) Except as otherwise specifically provided, no person shall operate or park or cause to be operated or parked a motor vehicle or tow or park or cause to be towed or parked a trailer on the highways unless such motor vehicle or trailer has displayed the proper number of plates as required in the Motor Vehicle Registration Act.

In each registration period in which new license plates are not issued, previously issued license plates shall have affixed thereto the validation decals issued pursuant to section 60-3,101. In all cases such license plates shall be securely fastened in an upright position to the motor vehicle or trailer so as to prevent such plates from swinging and at a minimum distance of twelve inches from the ground to the bottom of the license plate. No person shall attach to or display on such motor vehicle or trailer any (a) license plate or registration certificate other than as assigned to it for the current registration period, (b) fictitious or altered license plates or registration certificate, (c) license plates or

registration certificate that has been canceled by the department, or (d) license plates lacking current validation decals.

(2) All letters, numbers, printing, writing, and other identification marks upon such plates and certificate shall be kept clear and distinct and free from grease, dust, or other blurring matter, so that they shall be plainly visible at all times during daylight and under artificial light in the nighttime.

Source: Laws 2005, LB 274, § 99.

60-3,100 License plates; issuance.

(1) The department shall issue to every person whose motor vehicle or trailer is registered fully reflectorized license plates upon which shall be displayed (a) the registration number consisting of letters and numerals assigned to such motor vehicle or trailer in figures not less than two and one-half inches nor more than three inches in height and (b) also the word Nebraska suitably lettered so as to be attractive. Two license plates shall be issued for every motor vehicle, except that one plate shall be issued for dealers, motorcycles, minitrucks, truck-tractors, trailers, buses, and apportionable vehicles. The license plates shall be of a color designated by the director. The color of the plates shall be changed each time the license plates are changed. Each time the license plates are changed, the director shall secure competitive bids for materials pursuant to sections 81-145 to 81-162. Motorcycle, minitruck, and trailer license plate letters and numerals may be one-half the size of those required in this section.

(2) When two license plates are issued, one shall be prominently displayed at all times on the front and one on the rear of the registered motor vehicle or trailer. When only one plate is issued, it shall be prominently displayed on the rear of the registered motor vehicle or trailer. When only one plate is issued for motor vehicles registered pursuant to section 60-3,198 and truck-tractors, it shall be prominently displayed on the front of the apportionable vehicle.

Source: Laws 2005, LB 274, § 100; Laws 2010, LB650, § 25.
Operative date January 1, 2011.

60-3,101 License plates; when issued; validation decals.

Except for license plates issued pursuant to section 60-3,203, license plates shall be issued every six years beginning with the license plates issued in the year 2005. Except for plates issued pursuant to such section, in the years in which plates are not issued, in lieu of issuing such license plates, the department shall furnish to every person whose motor vehicle or trailer is registered one or two validation decals, as the case may be, which validation decals shall bear the year for which issued and be so constructed as to permit them to be permanently affixed to the plates.

Source: Laws 2005, LB 274, § 101.

60-3,102 Plate fee.

Whenever new license plates, including duplicate or replacement license plates, are issued to any person, a fee per plate shall be charged in addition to all other required fees. The plate fee shall be determined by the department and shall only cover the cost of the license plate and validation decals but shall not

exceed three dollars and fifty cents. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2005, LB 274, § 102.

60-3,103 License Plate Cash Fund; created; use; investment.

There is hereby created the License Plate Cash Fund which shall consist of money transferred to it pursuant to section 39-2215. All costs associated with the manufacture of license plates and decals provided for in the Motor Vehicle Registration Act and section 60-1804 shall be paid from funds appropriated from the License Plate Cash Fund. The fund shall be used exclusively for such purposes and shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2005, LB 274, § 103.

Cross References

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

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) Minitruck license plates issued pursuant to section 60-3,100;

(18) 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;

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

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

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

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

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

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

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

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

(27) 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;

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

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

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

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

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

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

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

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

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

(37) 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;

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

(39) 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; Laws 2010, LB650, § 26.
Operative date January 1, 2011.

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.

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.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

60-3,105 Motor vehicles owned or operated by the state, counties, municipalities, or school districts; distinctive plates or undercover license plates.

(1) The department may provide a distinctive license plate for all motor vehicles owned or operated by the state, counties, municipalities, or school districts. Motor vehicles owned or operated by the state, counties, municipalities, or school districts shall display such distinctive license plates when such license plates are issued or shall display undercover license plates when such license plates are issued under section 60-3,135.

(2) Any motor vehicle owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system, and exempt from a distinct marking as provided in section 81-1021, may carry license plates the same design and size as are provided in subsection (1) of this section or undercover license plates issued under section 60-3,135.

Source: Laws 2005, LB 274, § 105.

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.

60-3,106 Trailers owned or operated by the state, counties, municipalities, or school districts; distinctive plates.

(1) The department may provide a distinctive license plate for all trailers owned or operated by the state, counties, municipalities, or school districts. Trailers owned or operated by the state, counties, municipalities, or school districts shall display such distinctive license plates when such license plates are issued or shall display undercover license plates when such license plates are issued under section 60-3,135.

(2) Any trailer owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system, and exempt from a distinct marking as provided in section 81-1021, may carry license plates the same design and size as are provided in subsection (1) of this section or undercover license plates issued under section 60-3,135.

Source: Laws 2005, LB 274, § 106.

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.

60-3,107 Tax-exempt motor vehicles; distinctive plates.

The department may provide distinctive license plates issued for use on motor vehicles which are tax exempt pursuant to subdivision (6) of section 60-3,185. License plates on such motor vehicles shall display, in addition to the license number, the words tax exempt.

Source: Laws 2005, LB 274, § 107; Laws 2007, LB286, § 38.

60-3,108 Tax-exempt trailers; distinctive plates.

The department may provide distinctive license plates issued for use on trailers exempt pursuant to subdivision (6) of section 60-3,185. License plates

on such trailers shall display, in addition to the license number, the word exempt which shall appear at the bottom of the license plates.

Source: Laws 2005, LB 274, § 108.

60-3,109 Well-boring apparatus and well-servicing equipment license plates.

(1) Any owner of well-boring apparatus and well-servicing equipment may make application to the county treasurer or designated county official for license plates.

(2) Well-boring apparatus and well-servicing equipment license plates shall display thereon, in addition to the license number, the words special equipment.

Source: Laws 2005, LB 274, § 109.

60-3,110 Local truck; special permit; fee.

Any owner of a motor vehicle registered as a local truck may make application to the department for a special permit authorizing operation of such local truck on the highways of this state beyond the limits specified by law for local trucks for the sole purpose of having such truck equipped, modified, or serviced. The operator of the local truck shall have such permit in his or her possession at all times when he or she is operating such local truck beyond the limits specified by law for the local truck and shall display such permit upon demand of proper authorities. The fee for this permit shall be five dollars payable to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 110.

60-3,111 Farmers and ranchers; special permits; fee.

Special permits may be supplied by the department and issued by the county treasurer or designated county official for truck-tractor and semitrailer combinations of farmers or ranchers used wholly and exclusively to carry their own supplies, farm equipment, and household goods to or from the owner's farm or ranch or used by the farmer or rancher to carry his or her own agricultural products to or from storage or market. Such special permits shall be valid for periods of thirty days and shall be carried in the cab of the truck-tractor. The fee for such permit shall be equivalent to one-twelfth of the regular commercial registration fee as determined by gross vehicle weight and size limitations as defined in sections 60-6,288 to 60-6,294, but the fee shall be no less than twenty-five dollars. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

Source: Laws 2005, LB 274, § 111.

60-3,112 Nonresident licensed vehicle hauling grain or seasonally harvested products; permit; fee.

If a truck, truck-tractor, or trailer is lawfully licensed under the laws of another state or province and is engaged in hauling grain or other seasonally harvested products from the field where they are harvested to storage or market during the period from June 1 to December 15 of each year or under emergency conditions, the right to operate over the highways of this state for a period of ninety days shall be authorized by obtaining a permit therefor from

the county treasurer or designated county official or his or her agent of the county in which grain is first hauled. Such permit shall be issued electronically upon the payment of a fee of twenty dollars for a truck or one hundred fifty dollars for any combination of truck, truck-tractor, or trailer. The fees for such permits, when collected, shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 112.

60-3,113 Handicapped or disabled person; plates; department; compile and maintain registry.

(1) The department shall, without the payment of any fee except the taxes and fees required by sections 60-3,100, 60-3,102, 60-3,185, and 60-3,190, issue license plates for one motor vehicle not used for hire and a license plate for one motorcycle not used for hire to:

(a) Any permanently handicapped or disabled person as defined in section 18-1738 or his or her parent, legal guardian, foster parent, or agent upon application and proof of a permanent handicap or disability; or

(b) A trust which owns the motor vehicle or motorcycle if a designated beneficiary of the trust qualifies under subdivision (a) of this subsection.

Beginning January 1, 2005, an application and proof of disability in the form and with the information required by section 18-1738 shall be filed before license plates are issued or reissued.

(2) The license plate or plates shall carry the internationally accepted wheelchair symbol, which symbol is a representation of a person seated in a wheelchair surrounded by a border six units wide by seven units high, and such other letters or numbers as the director prescribes. Such license plate or plates shall be used by such person in lieu of the usual license plate or plates.

(3) The department shall compile and maintain a registry of the names, addresses, and license numbers of all persons who obtain special license plates pursuant to this section and all persons who obtain a handicapped or disabled parking permit as described in section 18-1739.

Source: Laws 2005, LB 274, § 113.

60-3,114 Dealer or manufacturer license plates; fee.

(1) Any licensed dealer or manufacturer may, upon payment of a fee of thirty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer or designated county official of the county in which his or her place of business is located for a certificate and one dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. One additional dealer license plate may be procured for the type of motor vehicle or trailer the dealer has sold during the last previous period of October 1 through September 30 for each twenty motor vehicles or trailers sold at retail during such period or one additional dealer license plate for each thirty motor vehicles or trailers sold at wholesale during such period, but not to exceed a total of five additional dealer license plates in the case of motor vehicles or trailers sold at wholesale, or, in the case of a manufacturer, for each ten motor vehicles or trailers actually

manufactured or assembled within the state within the last previous period of October 1 through September 30 for a fee of fifteen dollars each.

(2) Dealer or manufacturer license plates shall display, in addition to the registration number, the letters DLR.

Source: Laws 2005, LB 274, § 114.

60-3,115 Additional dealer license plates; unauthorized use; hearing.

When an applicant applies for a license, the Nebraska Motor Vehicle Industry Licensing Board may authorize the county treasurer or designated county official to issue additional dealer license plates when the dealer or manufacturer furnishes satisfactory proof for a need of additional dealer license plates because of special condition or hardship. In the case of unauthorized use of dealer license plates by any licensed dealer, the Nebraska Motor Vehicle Industry Licensing Board may hold a hearing and after such hearing may determine that such dealer is not qualified for continued usage of such dealer license plates for a set period not to exceed one year.

Source: Laws 2005, LB 274, § 115.

60-3,116 Personal-use dealer license plates; fee.

(1) Any licensed dealer or manufacturer may, upon payment of an annual fee of two hundred fifty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer or designated county official of the county in which his or her place of business is located for a certificate and one personal-use dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. Additional personal-use dealer license plates may be procured upon payment of an annual fee of two hundred fifty dollars each, subject to the same limitations as provided in section 60-3,114 as to the number of additional dealer license plates. A personal-use dealer license plate may be displayed on a motor vehicle having a gross weight including any load of six thousand pounds or less belonging to the dealer, may be used in the same manner as a dealer license plate, and may be used for personal or private use of the dealer, the dealer's immediate family, or any bona fide employee of the dealer licensed pursuant to the Motor Vehicle Industry Regulation Act.

(2) Personal-use dealer license plates shall have the same design and shall be displayed as provided in sections 60-370 and 60-3,100.

Source: Laws 2005, LB 274, § 116; Laws 2010, LB816, § 11.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-3,117 Surrender of dealer license plates; when.

When any motor vehicle or trailer dealer's or manufacturer's license has been revoked or otherwise terminated, it shall be the duty of such dealer or manufacturer to immediately surrender to the department or to the Nebraska Motor Vehicle Industry Licensing Board any dealer license plates issued to him or her for the current year. Failure of such dealer or manufacturer to immedi-

ately surrender such dealer license plates to the department upon demand by the department shall be unlawful.

Source: Laws 2005, LB 274, § 117.

60-3,118 Personalized message license plates; conditions.

(1) In lieu of the license plates provided for by section 60-3,100, the department shall issue personalized message license plates for motor vehicles, trailers, semitrailers, or cabin trailers, except for motor vehicles and trailers registered under section 60-3,198, to all applicants who meet the requirements of sections 60-3,119 to 60-3,121. Personalized message license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters may be used, except that for motorcycles, a maximum of six characters may be used.

(2) The following conditions apply to all personalized message license plates:

(a) County prefixes shall not be allowed except in counties using the alphanumeric system for motor vehicle registration. The numerals in the county prefix shall be the numerals assigned to the county, pursuant to subsection (2) of section 60-370, in which the motor vehicle or cabin trailer is registered. Renewal of a personalized message license plate containing a county prefix shall be conditioned upon the motor vehicle or cabin trailer being registered in such county. The numerals in the county prefix, including the hyphen or any other unique design for an existing license plate style, count against the maximum number of characters allowed under this section;

(b) The characters in the order used shall not conflict with or duplicate any number used or to be used on the regular license plates or any number or license plate already approved pursuant to sections 60-3,118 to 60-3,121;

(c) The characters in the order used shall not express, connote, or imply any obscene or objectionable words or abbreviations; and

(d) An applicant receiving a personalized message license plate for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to such license plate.

(3) The department shall have sole authority to determine if the conditions prescribed in subsection (2) of this section have been met.

Source: Laws 2005, LB 274, § 118; Laws 2007, LB286, § 39.

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.

60-3,120 Personalized message license plates; delivery.

When the department approves an application for personalized message license plates, it shall notify the applicant and deliver the license plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is to be registered. The county treasurer or designated county official shall deliver such plates to the applicant, 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.

Source: Laws 2005, LB 274, § 120.

60-3,121 Personalized message license plates; transfer; credit allowed; fee.

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

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

(3) Application for such transfer shall be accompanied by a fee of three dollars. The fees shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 121.

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. 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 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; Laws 2010, LB705, § 1.
Effective date July 15, 2010.

60-3,122.01 Gold Star Family plates; design requirements.

(1) The department shall design license plates to be known as Gold Star Family plates. The department shall create designs reflecting support for those who died while serving in good standing in the United States Armed Forces in consultation with the Department of Veterans' Affairs and the Military Department. The Department of Veterans' Affairs shall recommend the design of the plate to the Department of Motor Vehicles. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate when it is designed. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,122.02.

(2) One type of Gold Star Family plate shall be consecutively numbered plates. The department shall:

(a) Number the plates consecutively beginning with the number one, using numerals the size of which maximizes legibility and limiting the numerals to five characters or less; and

(b) Not use a county designation or any characters other than numbers on the plates.

(3) One type of Gold Star Family plate shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

Source: Laws 2007, LB570, § 2.

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.

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. 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 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; Laws 2010, LB705, § 2.
Effective date July 15, 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. 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 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; Laws 2010, LB705, § 3.
Effective date July 15, 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.

60-3,126 Amateur radio station license plates; fee; renewal.

(1) Any person who holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission and is the owner of a motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles and trailers registered under section 60-3,198, may, in addition to the application required by section 60-385, apply to the department for license plates upon which shall be inscribed the official amateur radio call letters of such applicant.

(2) Such license plates shall be issued, in lieu of the usual numbers and letters, to such an applicant upon payment of the regular license fee and the payment of an additional fee of five dollars and furnishing proof that the applicant holds such an unrevoked and unexpired amateur radio station license. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one such motor vehicle or trailer owned by an applicant shall be so registered at any one time.

(3) An applicant applying for renewal of amateur radio station license plates shall again furnish proof that he or she holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission.

(4) The department shall prescribe the size and design of the license plates and furnish such plates to the persons applying for and entitled to the same upon the payment of the required fee.

Source: Laws 2005, LB 274, § 126; Laws 2007, LB286, § 44.

60-3,127 Nebraska Cornhusker Spirit Plates; design requirements.

(1) The department, in designing Nebraska Cornhusker Spirit Plates, shall:

(a) Include the word Cornhuskers or Huskers prominently in the design;

(b) Use scarlet and cream colors in the design or such other similar colors as the department determines to best represent the official team colors of the University of Nebraska Cornhuskers athletic programs and to provide suitable reflection and contrast;

(c) Use cream or a similar color for the background of the design and scarlet or a similar color for the printing; and

(d) Create a design reflecting support for the University of Nebraska Cornhuskers athletic programs in consultation with the University of Nebraska-Lincoln Athletic Department. The design shall be selected on the basis of (i) enhancing the marketability of spirit plates to supporters of University of Nebraska Cornhuskers athletic programs and (ii) limiting the manufacturing cost of each spirit plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102.

(2) One type of Nebraska Cornhusker Spirit Plates shall be consecutively numbered spirit plates. The department shall:

(a) Number the spirit plates consecutively beginning with the number one, using numerals the size of which maximizes legibility; and

(b) Not use a county designation or any characters other than numbers on the spirit plates.

(3) One type of Nebraska Cornhusker Spirit Plates shall be personalized message spirit plates. Such plates shall be issued subject to the same conditions specified for message plates in subsection (2) of section 60-3,118. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters may be used.

Source: Laws 2005, LB 274, § 127.

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.

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.

Cross References

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

60-3,130 Historical license plates; conditions.

(1) Except as provided in section 60-3,134, a person presenting a certificate of title issued pursuant to section 60-142.01 or 60-142.02 or a certificate of title indicating that the vehicle is thirty or more years old may apply for historical license plates or may use license plates of the year of manufacture in lieu of regular license plates as provided in sections 60-3,130 to 60-3,134.

(2) Each collector applying for such license plates, other than a nonprofit organization described in sections 21-608 and 21-609, must own and have registered one or more motor vehicles with regular license plates which he or she uses for regular transportation.

(3) A motor vehicle or trailer manufactured, assembled from a kit, or otherwise assembled as a reproduction or facsimile of a historical vehicle shall not be eligible for historical license plates unless it has been in existence for thirty years or more. The age of the motor vehicle or trailer shall be calculated from the year reflected on the certificate of title.

Source: Laws 2005, LB 274, § 130; Laws 2006, LB 663, § 24.

60-3,130.01 Historical license plates; application; form; contents.

The application under section 60-3,130 shall be made on a form prescribed and furnished by the department. The form shall contain (1) a description of the vehicle owned and sought to be registered, including the make, body type, model, vehicle identification number, and year of manufacture, (2) a description of any vehicle owned by the applicant and registered by him or her with regular license plates and used for regular transportation, which description shall include make, body type, model, vehicle identification number, year of manufacture, and the Nebraska registration number assigned to the vehicle, and (3) an affidavit sworn to by the vehicle owner that the historical vehicle is being collected, preserved, restored, and maintained by the applicant as a hobby and not for the general use of the vehicle for the same purposes and under the same circumstances as other motor vehicles of the same type.

Source: Laws 2006, LB 663, § 25.

60-3,130.02 Historical license plates; fees.

(1) An initial processing fee of ten dollars shall be submitted with an application under section 60-3,130 to defray the costs of issuing the first plate to each collector and to establish a distinct identification number for each collector. A fee of fifty dollars for each vehicle so registered shall also be submitted with the application.

(2) For use of license plates as provided in section 60-3,130.04, a fee of twenty-five dollars shall be submitted with the application in addition to the fees specified in subsection (1) of this section.

(3) The fees shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2006, LB 663, § 26.

60-3,130.03 Historical license plates; department; powers and duties.

The department shall design historical license plates with a distinctive design which, in addition to the identification number, includes the words historical and Nebraska for identification. The department may adopt and promulgate rules and regulations to implement sections 60-3,130 to 60-3,134.

Source: Laws 2006, LB 663, § 27.

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.

60-3,130.05 Historical license plates; model-year license plates; validity.

License plates issued or used pursuant to section 60-3,130 or 60-3,130.04 shall be valid while the vehicle is owned by the applicant without the payment of any additional fee, tax, or license.

Source: Laws 2006, LB 663, § 29.

60-3,130.06 Historical vehicle; transfer of registration and license plates; authorized; fee.

A collector, upon loss of possession of a historical vehicle registered pursuant to section 60-3,130, may have the registration and license plate transferred to another vehicle in his or her possession, which is eligible for such registration, upon payment of a fee of twenty-five dollars. The fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2006, LB 663, § 30.

60-3,130.07 Historical vehicles; registered and licensed on August 24, 1975; how treated.

Collectors who, on August 24, 1975, had vehicles registered and licensed as historical vehicles shall be permitted to retain such registration and license if the collector submits an affidavit to the department sworn to by the vehicle owner that the vehicle is being collected, preserved, restored, and maintained as a hobby and not for the general use of the vehicle.

Source: Laws 2006, LB 663, § 31.

60-3,131 Historical vehicles; use.

(1) Except as otherwise provided in subsection (2) of this section, historical vehicles may be used for hobby pursuits but shall not be used for the same purposes and under the same conditions as other motor vehicles or trailers of the same type, and under ordinary circumstances, such historical vehicles shall not be used to transport passengers for hire. Any such historical vehicle shall not be used for business or occupation or regularly for transportation to and from work, and may be driven on the public streets and roads only for servicing, test drives, public displays, parades, and related pleasure or hobby activities.

(2) For special events that are sponsored or in which participation is by organized clubs such historical vehicles may:

(a) Transport passengers for hire only if any money received is to be used for club activities or to be donated to a charitable nonprofit organization; and

(b) Haul other vehicles to and from such special event.

Source: Laws 2005, LB 274, § 131; Laws 2006, LB 815, § 1.

60-3,132 Historical vehicles; storage; conditions.

Subject to land-use regulations of a county or municipality, a collector may store any motor vehicles, trailers, or parts vehicles, licensed or unlicensed, operable or inoperable, on his or her property if such motor vehicles, trailers, and parts vehicles and any outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and if the motor vehicles, trailers, and parts vehicles are located away from ordinary public view or are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, opaque covering, or other appropriate means.

Source: Laws 2005, LB 274, § 132; Laws 2006, LB 663, § 32.

60-3,133 Historical vehicles; emission controls; exempt, when; safety equipment; proper operating condition.

(1) Unless the presence of equipment specifically named by Nebraska law was a prior condition for legal sale within Nebraska at the time a specific model of historical vehicle was manufactured for first use, the presence of such equipment shall not be required as a condition for use of any such model of historical vehicle as authorized in section 60-3,131.

(2) Any historical vehicle manufactured prior to the date emission controls were standard equipment on that particular make or model of historical vehicle is exempted from statutes requiring the inspection and use of such emission controls.

(3) Any safety equipment that was manufactured as part of the historical vehicle's original equipment must be in proper operating condition.

Source: Laws 2005, LB 274, § 133; Laws 2006, LB 663, § 33.

60-3,134 Historical vehicle; registered with regular license plates; when.

Any motor vehicle or trailer that qualifies as an historical vehicle which is used for the same general purposes and under the same conditions as motor vehicles or trailers registered with regular license plates shall be required to be registered with regular license plates, regardless of its age, and shall be subject to the payment of the same taxes and fees required of motor vehicles or trailers registered with regular license plates.

Source: Laws 2005, LB 274, § 134.

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.

60-3,136 Motor vehicle insurance data base; created; powers and duties; Motor Vehicle Insurance Data Base Task Force; created.

(1)(a) The motor vehicle insurance data base is created. The department shall develop and administer the motor vehicle insurance data base which shall include the information provided by insurance companies as required by the department pursuant to sections 60-3,136 to 60-3,139. The motor vehicle insurance data base shall be used to facilitate registration of motor vehicles in this state by the department and its agents. The director may contract with a designated agent for the purpose of establishing and operating the motor vehicle insurance data base and monitoring compliance with the financial responsibility requirements of such sections. The department shall implement the motor vehicle insurance data base no later than July 1, 2004. The director shall designate the date for the department's implementation of the motor vehicle insurance data base.

(b) The department may adopt and promulgate rules and regulations to carry out sections 60-3,136 to 60-3,139. The rules and regulations shall include specifications for the information to be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance data base, and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance data base, as recommended by the Motor Vehicle Insurance Data Base Task Force created in subsection (2) of this section in its report to the department.

(2)(a) The Motor Vehicle Insurance Data Base Task Force is created. The Motor Vehicle Insurance Data Base Task Force shall investigate the best practices of the industry and recommend specifications for the information to

be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance data base and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance data base.

(b) The Motor Vehicle Insurance Data Base Task Force shall consist of:

(i) The Director of Motor Vehicles or his or her designee;

(ii) The Director of Insurance or his or her designee;

(iii) The following members who shall be selected by the Director of Insurance:

(A) One representative of a domestic automobile insurance company or domestic automobile insurance companies;

(B) One representative of an admitted foreign automobile insurance company or admitted foreign automobile insurance companies; and

(C) One representative of insurance producers licensed under the laws of this state; and

(iv) Four members to be selected by the Director of Motor Vehicles.

(c) The requirements of this subsection shall expire on July 1, 2004, except that the director may reconvene the task force at any time thereafter if he or she deems it necessary.

Source: Laws 2005, LB 274, § 136.

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.

60-3,138 Motor vehicle insurance data base; information; restrictions.

Information provided to the department by insurance companies for inclusion in the motor vehicle insurance data base created under section 60-3,136 is the property of the insurance company and the department, as the case may be. The department may disclose whether an individual has the required insurance coverage pursuant to the Uniform Motor Vehicle Records Disclosure Act, but in no case shall the department provide any person's insurance coverage information for purposes of resale, for purposes of solicitation, or as bulk listings.

Source: Laws 2005, LB 274, § 138.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

60-3,139 Motor vehicle insurance data base; immunity.

(1) The state shall not be liable to any person for gathering, managing, or using information in the motor vehicle insurance data base created under section 60-3,136.

(2) No insurance company shall be liable to any person for performing its duties under sections 60-3,136 to 60-3,138, unless and to the extent the insurance company commits a willful and wanton act or omission.

Source: Laws 2005, LB 274, § 139.

60-3,140 Registration fees; to whom payable.

All fees for the registration of motor vehicles or trailers, unless otherwise expressly provided, shall be paid to the county treasurer or designated county official of the county in which the motor vehicle or trailer has situs. If registered pursuant to section 60-3,198, all fees shall be paid to the department.

Source: Laws 2005, LB 274, § 140.

60-3,141 Agents of department; fees; collection.

(1) The various county treasurers or designated county officials shall act as agents for the department in the collection of all motor vehicle taxes, motor vehicle fees, and registration fees.

(2) While acting as agents pursuant to subsection (1) of this section, the county treasurers or designated county officials shall in addition to the taxes and registration fees collect and retain for the county two dollars for each registration of a motor vehicle or trailer of a resident of the State of Nebraska and five dollars for each registration of a motor vehicle or trailer of a nonresident from the funds collected for the registration issued. Such fees collected by the county shall be remitted to the county treasurer for credit to the county general fund.

(3) The county treasurers or designated county officials shall transmit all motor vehicle fees and registration fees collected to the State Treasurer on or before the twenty-fifth day of each month and at such other times as the State Treasurer requires for credit to the Motor Vehicle Fee Fund and the Highway Trust Fund, respectively, except as provided in section 60-3,156. Any county treasurer or designated county official who fails to transfer to the State Treasurer the amount due the state at the times required in this section shall pay interest at the rate specified in section 45-104.02, as such rate may be adjusted from time to time, from the time the motor vehicle fees and registration fees become due until paid.

Source: Laws 2005, LB 274, § 141; Laws 2007, LB286, § 47.

60-3,142 Fees; retention by county.

The various county treasurers or designated county officials acting as agents for the department in collection of the fees shall retain five percent of each fee collected under section 60-3,112. The five percent shall be remitted to the county treasurer for credit to the county general fund.

Source: Laws 2005, LB 274, § 142; Laws 2007, LB286, § 48.

60-3,143 Passenger motor vehicle; leased motor vehicle; registration fee.

(1) For every motor vehicle of ten-passenger capacity or less and not used for hire, the registration fee shall be fifteen dollars.

(2) For each motor vehicle having a seating capacity of ten persons or less and used for hire, the registration fee shall be six dollars plus an additional four dollars for every person such motor vehicle is equipped to carry in addition to the driver.

(3) For motor vehicles leased for hire when no driver or chauffeur is furnished by the lessor as part of the consideration paid for by the lessee, incident to the operation of the leased motor vehicle, the fee shall be fifteen dollars.

Source: Laws 2005, LB 274, § 143.

60-3,144 Buses; registration fees.

(1) For buses used exclusively to carry children to and from school, and other school activities, the registration fee shall be ten dollars.

(2) For buses equipped to carry more than ten persons for hire, the fee shall be based on the weight of such bus. To ascertain the weight, the unladen weight in pounds shall be used. There shall be added to such weight in pounds the number of persons such bus is equipped to carry times two hundred, the sum thereof being the weight of such bus for license purposes. The unladen weight shall be ascertained by scale weighing of the bus fully equipped and as used upon the highways under the supervision of a member of the Nebraska State Patrol or a carrier enforcement officer and certified by such patrol member or carrier enforcement officer to the department or county treasurer or designated county official. The fee therefor shall be as follows:

(a) If such bus weighs thirty-two thousand pounds and less than thirty-four thousand pounds, it shall be licensed as a twelve-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(b) If such bus weighs thirty thousand pounds and less than thirty-two thousand pounds, it shall be licensed as an eleven-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(c) If such bus weighs twenty-eight thousand pounds and less than thirty thousand pounds, it shall be licensed as a ten-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(d) If such bus weighs twenty-two thousand pounds and less than twenty-eight thousand pounds, it shall be licensed as a nine-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(e) If such bus weighs sixteen thousand pounds and less than twenty-two thousand pounds, it shall be licensed as an eight-ton truck as provided in section 60-3,147 and pay the same fee as therein provided; and

(f) If such bus weighs less than sixteen thousand pounds, it shall be licensed as a five-ton truck as provided in section 60-3,147 and pay the same fee as therein provided, except that upon registration of buses equipped to carry ten passengers or more and engaged entirely in the transportation of passengers for hire within municipalities or in and within a radius of five miles thereof the fee shall be seventy-five dollars, and for buses equipped to carry more than ten passengers and not for hire the registration fee shall be thirty dollars.

(3) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

Source: Laws 2005, LB 274, § 144.

60-3,145 Local trucks; registration fees.

(1) The registration fee on local trucks shall be based on the gross vehicle weight as provided in section 60-3,147, and local trucks shall be registered at a fee of thirty percent of the commercial motor vehicle registration fee, except that (a) no local truck shall be registered for a fee of less than eighteen dollars, (b) the registration fee for each truck with a factory-rated capacity of one ton or less shall be eighteen dollars, and (c) commercial pickup trucks with a gross load of over three tons shall be registered for the fee provided for commercial motor vehicles.

(2) Local truck license plates shall display, in addition to the registration number, the designation of local motor vehicles.

Source: Laws 2005, LB 274, § 145; Laws 2007, LB286, § 49.

60-3,146 Farm trucks; registration fees.

(1) For the registration of farm trucks, except for trucks or combinations of trucks or truck-tractors and trailers having a gross vehicle weight exceeding sixteen tons, the registration fee shall be eighteen dollars for up to and including five tons gross vehicle weight, and in excess of five tons the fee shall be twenty-two dollars.

(2) For a truck or a combination of a truck or truck-tractor and trailer weighing in excess of sixteen tons registered as a farm truck, except as provided in sections 60-3,111 and 60-3,151, the registration fee shall be based upon the gross vehicle weight. The registration fee on such trucks weighing in excess of sixteen tons shall be at the following rates: For a gross weight in excess of sixteen tons up to and including twenty tons, forty dollars plus five dollars for each ton of gross weight over seventeen tons, and for gross weight exceeding twenty tons, sixty-five dollars plus ten dollars for each ton of gross weight over twenty tons.

(3) Farm truck license plates shall display, in addition to the registration number, the designation farm and the words NOT FOR HIRE.

(4) Farm trucks with a gross weight of over sixteen tons license plates shall also display the weight that such farm truck is licensed for, using a decal on the license plates in letters and numerals of such size and design as shall be determined and issued by the department.

Source: Laws 2005, LB 274, § 146.

60-3,147 Commercial motor vehicles; registration fees.

(1) The registration fee on commercial motor vehicles, except those motor vehicles registered under section 60-3,198, shall be based upon the gross vehicle weight, not to exceed the maximum authorized by section 60-6,294.

(2) The registration fee on commercial motor vehicles, except for motor vehicles and trailers registered under section 60-3,198, shall be based on the gross vehicle weight on such commercial motor vehicles plus the gross vehicle weight of any trailer or combination with which it is operated, except that for the purpose of determining the registration fee, the gross vehicle weight of a

commercial motor vehicle towing or hauling a disabled or wrecked motor vehicle properly registered for use on the highways shall be only the gross vehicle weight of the towing commercial motor vehicle fully equipped and not including the weight of the motor vehicle being towed or hauled.

(3) Except as provided in subsection (4) of this section, the registration fee on such commercial motor vehicles shall be at the following rates:

(a) For a gross vehicle weight of three tons or less, eighteen dollars;

(b) For a gross vehicle weight exceeding three tons and not exceeding four tons, twenty-five dollars;

(c) For a gross vehicle weight exceeding four tons and not exceeding five tons, thirty-five dollars;

(d) For a gross vehicle weight exceeding five tons and not exceeding six tons, sixty dollars;

(e) For a gross vehicle weight exceeding six tons but not exceeding seven tons, eighty-five dollars;

(f) For a gross vehicle weight in excess of seven tons, the fee shall be that for a commercial motor vehicle having a gross vehicle weight of seven tons and, in addition thereto, twenty-five dollars for each ton of gross vehicle weight over seven tons.

(4)(a) For fractional tons in excess of the twenty percent or the tolerance of one thousand pounds, as provided in section 60-6,300, the fee shall be computed on the basis of the next higher bracket.

(b) The fees provided by this section shall be reduced ten percent for motor vehicles used exclusively for the transportation of agricultural products.

(c) Fees for commercial motor vehicles with a gross vehicle weight in excess of thirty-six tons shall be increased by twenty percent for all such commercial motor vehicles operated on any highway not a part of the National System of Interstate and Defense Highways.

(5)(a) Such fee may be paid one-half at the time of registration and one-half on the first day of the seventh month of the registration period when the license fee exceeds two hundred ten dollars. When the second half is paid, the county treasurer or designated county official shall furnish a registration certificate and license plates issued by the department which shall be displayed on such commercial motor vehicle in the manner provided by law. In addition to the registration fee, the department shall collect a sufficient fee to cover the cost of issuing the certificate and license plates.

(b) If such second half is not paid within thirty days following the first day of the seventh month, the registration of such commercial motor vehicle shall be canceled and the registration certificate and license plates shall be returned to the county treasurer or designated county official.

(c) Such fee shall be paid prior to any subsequent registration or renewal of registration.

(6) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

(7) A license plate or plates issued to a commercial motor vehicle with a gross weight of five tons or over shall display, in addition to the registration number, the weight that the commercial motor vehicle is licensed for, using a decal on the license plate or plates of the commercial motor vehicle in letters

and numerals of such size and design as shall be determined and issued by the department.

Source: Laws 2005, LB 274, § 147; Laws 2007, LB286, § 50.

60-3,148 Commercial motor vehicle; increase of gross vehicle weight; where allowed.

No owner of a commercial motor vehicle shall be permitted to increase the gross vehicle weight for which such commercial motor vehicle is registered except at the office of the county treasurer or designated county official in the county where such commercial motor vehicle is currently registered unless the need for such increase occurs when such commercial motor vehicle is more than one hundred miles from the county seat of such county, unless authorized to do so by the Nebraska State Patrol or authorized state scale examiner as an emergency.

Source: Laws 2005, LB 274, § 148.

60-3,149 Soil and water conservation vehicles; registration fee.

(1) For the registration of 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, the registration fee shall be one-half of the rate for similar commercial motor vehicles registered under section 60-3,147, except that no commercial motor vehicle or commercial trailer registered under this section shall be registered for a fee of less than eighteen dollars.

(2) Such license plates shall display, in addition to the registration number, the letter A.

Source: Laws 2005, LB 274, § 149.

60-3,150 Truck-tractor and semitrailer; commercial trailer; registration fee.

For registration purposes, a truck-tractor and semitrailer unit and a commercial trailer shall be considered as separate units. The registration fee of the truck-tractor shall be the fee provided for commercial motor vehicles. Each semitrailer and each commercial trailer shall be registered upon the payment of a fee of one dollar. The department shall provide an appropriate license plate or, when appropriate, validation decal to identify such semitrailers. If any truck or truck-tractor, operated under the classification designated as local, farm, or A or with plates issued under section 60-3,113 is operated outside of the limits of its respective classification, it shall thereupon come under the classification of commercial motor vehicle.

Source: Laws 2005, LB 274, § 150; Laws 2007, LB286, § 51.

60-3,151 Trailers; recreational vehicles; registration fee.

(1) For the registration of any commercial trailer or semitrailer, the fee shall be one dollar.

(2) The fee for utility trailers shall be one dollar for each one thousand pounds gross vehicle weight or fraction thereof, up to and including nine thousand pounds. Utility trailer license plates shall display, in addition to the

registration number, the letter X. Trailers other than farm trailers of more than nine thousand pounds must be registered as commercial trailers.

(3) The fee for cabin trailers having gross vehicle weight of one thousand pounds or less shall be nine dollars and more than one thousand pounds, but less than two thousand pounds, shall be twelve dollars. Cabin trailers having a gross vehicle weight of two thousand pounds or more shall be registered for a fee of fifteen dollars.

(4) Recreational vehicles having a gross vehicle weight of eight thousand pounds or less shall be registered for a fee of eighteen dollars, those having a gross vehicle weight of more than eight thousand pounds but less than twelve thousand pounds shall be registered for thirty dollars, and those having a gross vehicle weight of twelve thousand pounds or over shall be registered for forty-two dollars. When living quarters are added to a registered truck, a recreational vehicle registration may be obtained without surrender of the truck registration, in which event both the truck and recreational vehicle license plates shall be displayed on the vehicle. Recreational vehicle license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

(5) Farm trailers shall be licensed for a fee of one dollar, except that when a farm trailer is used with a registered farm truck, such farm trailer may, at the option of the owner, be registered as a separate unit for a fee of three dollars per ton gross vehicle weight and, if so registered, shall not be considered a truck and trailer combination for purposes of sections 60-3,145 and 60-3,146. Farm trailer license plates shall display, in addition to the registration number, the letter X.

(6) Fertilizer trailers shall be registered for a fee of one dollar. Fertilizer trailer license plates shall display, in addition to the registration number, the letter X.

(7) Trailers used to haul poles and cable reels owned and operated exclusively by public utility companies shall be licensed at a fee based on two dollars for each one-thousand-pound load to be hauled or any fraction thereof, and such load shall not exceed sixteen thousand pounds.

Source: Laws 2005, LB 274, § 151.

60-3,152 Ambulances; hearses; registration fee.

For all ambulances, except publicly owned ambulances, and hearses, the registration fee shall be fifteen dollars.

Source: Laws 2005, LB 274, § 152.

60-3,153 Motorcycle; registration fee.

For the registration of every motorcycle, the fee shall be six dollars.

Source: Laws 2005, LB 274, § 153.

60-3,154 Taxicabs; registration fee.

For taxicabs, used for hire, duly licensed by the governing authorities of cities and villages, the registration fee shall be fifteen dollars.

Source: Laws 2005, LB 274, § 154.

60-3,155 Well-boring apparatus and well-servicing equipment; registration fee.

For the registration of well-boring apparatus and well-servicing equipment, the registration fee shall be one-twelfth of the regular commercial registration fee as determined by gross vehicle weight. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

Source: Laws 2005, LB 274, § 155.

60-3,156 Additional fees.

In addition to the registration fees for motor vehicles and trailers, the county treasurer or designated county official or his or her agent shall collect:

(1) One dollar and fifty cents for each certificate issued and shall remit one dollar and fifty cents of each additional fee collected to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund;

(2) Fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the Nebraska Emergency Medical System Operations Fund;

(3) One dollar and fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the State Recreation Road Fund; and

(4) For the period January 1, 2003, through December 31, 2005, twenty-five cents for each certificate issued to pay for the costs of the motor vehicle insurance data base created under section 60-3,136 and shall remit such additional fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 156.

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.

60-3,158 Methods of payment authorized.

A county treasurer or designated county official or his or her agent may accept credit cards, charge cards, debit cards, or electronic funds transfers as a means of payment for registration pursuant to section 13-609.

Source: Laws 2005, LB 274, § 158.

60-3,159 Registration fees; fees for previous years.

Upon application to register any motor vehicle or trailer, no registration fee shall be required to be paid thereon for any previous registration period during which such motor vehicle or trailer was not at any time driven or used upon

any highway within this state, and the person desiring to register such motor vehicle or trailer without payment of fees for previous registration periods shall file with the county treasurer or designated county official an affidavit showing where, when, and for how long such motor vehicle or trailer was stored and that the same was not used in this state during such registration period or periods, and upon receipt thereof the county treasurer or designated county official shall issue a registration certificate.

Source: Laws 2005, LB 274, § 159.

60-3,160 Governmental vehicle; exempt from fee.

No registration fee shall be charged for any motor vehicle or trailer owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system.

Source: Laws 2005, LB 274, § 160.

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.

60-3,161 Registration; records; copy or extract provided; electronic access; fee.

(1) The department shall keep a record of each motor vehicle and trailer registered, alphabetically by name of the owner, with cross reference in each instance to the registration number assigned to such motor vehicle and trailer. The record may be destroyed by any public officer having custody of it after three years from the date of its issuance.

(2) The department shall issue a copy of the record of a registered or titled motor vehicle or trailer to any person after receiving from the person the name on the registration, the license plate number, the vehicle identification number, or the title number of a motor vehicle or trailer, if the person provides to the department verification of identity and purpose pursuant to section 60-2906 or 60-2907. A fee of one dollar shall be charged for the copy. An extract of the entire file of motor vehicles and trailers registered or titled in the state or updates to the entire file may be provided to a person upon payment of a fee of eighteen dollars per thousand records. Any fee received by the department pursuant to this subsection shall be deposited into the Department of Motor Vehicles Cash Fund.

(3) The record of each motor vehicle or trailer registration or title maintained by the department pursuant to this section may be made available electronically through the gateway or electronic network established under section 84-1204 so long as the Uniform Motor Vehicle Records Disclosure Act is not violated. There shall be a fee of one dollar per record for individual records. For batch requests for multiple motor vehicle or trailer title and registration records selected on the basis of criteria of the individual making the request, there shall be a fee of fifty dollars for every request under two thousand records and a fee of eighteen dollars per one thousand records for any number of records over

two thousand, plus a reasonable programming fee not to exceed five hundred twenty dollars. All fees collected pursuant to this subsection for electronic access to records through the gateway shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the department.

Source: Laws 2005, LB 274, § 161; Laws 2008, LB756, § 13.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

60-3,162 Certificate of registration; illegal issuance; revocation.

The department shall, upon a sworn complaint in writing of any person, investigate whether a certificate of registration has been issued on a motor vehicle or trailer exceeding the length, height, or width provided by law or issued contrary to any law of this state. If the department determines from the investigation that such certificate of registration has been illegally issued, it shall have power to revoke such certificate of registration.

Source: Laws 2005, LB 274, § 162.

60-3,163 Registration certificate; outstanding warrant for arrest; refusal of issuance; courts; duties.

No motor vehicle or trailer may be registered in the State of Nebraska when there is an outstanding warrant for the arrest of the owner thereof issued out of any court located within this state and such warrant arises out of an alleged violation of a state statute or municipal ordinance involving the use of a motor vehicle or trailer. Each court in the state shall, on or before the fifth day of each month, submit to the county treasurer or designated county official of the county in which the court is located an alphabetized list of all persons against whom such warrants exist for the preceding month.

Source: Laws 2005, LB 274, § 163.

60-3,164 Operation or parking of unregistered vehicle; penalty.

(1) Any person who operates or parks a motor vehicle or who tows or parks a trailer on any highway, which motor vehicle or trailer has not been registered as required by section 60-362, shall be subject to the penalty provided in section 60-3,170.

(2) A person who parks a motor vehicle or tows a trailer on any highway, which motor vehicle or trailer has been properly registered in this state but such registration has expired, shall not be in violation of this section or section 60-362 or subject to the penalty provided in section 60-3,170, unless thirty days have passed from the expiration of the prior registration.

Source: Laws 2005, LB 274, § 164.

60-3,165 Registration; noncompliance; citation; effect.

If a citation is issued to an owner or operator of a motor vehicle or trailer for a violation of section 60-362 and the owner properly registers and licenses the motor vehicle or trailer not in compliance and pays all taxes and fees due and the owner or operator provides proof of such registration to the prosecuting

attorney within ten days after the issuance of the citation, no prosecution for the offense cited shall occur.

Source: Laws 2005, LB 274, § 165.

60-3,166 Law enforcement officers; arrest violators; violations; penalty; payment of taxes and fees.

It shall be the duty of all law enforcement officers to arrest all violators of any of the provisions of sections 60-373, 60-374, 60-375, 60-376, 60-378, 60-379, and 60-3,114 to 60-3,116. Any person, firm, or corporation, including any motor vehicle, trailer, or boat dealer or manufacturer, who fails to comply with such provisions shall be guilty of a Class V misdemeanor and, in addition thereto, shall pay the county treasurer or designated county official any and all motor vehicle taxes and fees imposed in sections 60-3,185 and 60-3,190, registration fees, or certification fees due had the motor vehicle or trailer been properly registered or certified according to law.

Source: Laws 2005, LB 274, § 166.

60-3,167 Financial responsibility; owner; requirements; prohibited acts; violation; penalty; dismissal of citation; when.

(1) It shall be unlawful for any owner of a motor vehicle or trailer which is being operated or towed with In Transit stickers pursuant to section 60-376, which is being operated or towed pursuant to section 60-365 or 60-369, or which is required to be registered in this state and which is operated or towed on a public highway of this state to allow the operation or towing of the motor vehicle or trailer on a public highway of this state without having a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility. The owner shall be presumed to know of the operation or towing of his or her motor vehicle or trailer on a highway of this state in violation of this section when the motor vehicle or trailer is being operated or towed by a person other than the owner. An owner of a motor vehicle or trailer who operates or tows the motor vehicle or trailer or allows the operation or towing of the motor vehicle or trailer in violation of this section shall be guilty of a Class II misdemeanor and shall be advised by the court that his or her motor vehicle operator's license, motor vehicle certificate of registration, and license plates will be suspended by the department until he or she complies with sections 60-505.02 and 60-528. Upon conviction the owner shall have his or her motor vehicle operator's license, motor vehicle certificate of registration, and license plates suspended by the department until he or she complies with sections 60-505.02 and 60-528. The owner shall also be required to comply with section 60-528 for a continuous period of three years after the violation. This subsection shall not apply to motor vehicles or trailers registered in another state.

(2) An owner who is unable to produce a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility upon the request of a law enforcement officer shall be allowed ten days after the date of the request to produce proof to the appropriate prosecutor or county attorney that a current and effective automobile liability policy or proof of financial responsibility was in existence for the motor vehicle or trailer at the time of such request. Upon presentation of such proof, the citation shall be

dismissed by the prosecutor or county attorney without cost to the owner and no prosecution for the offense cited shall occur.

(3) The department shall, for any person convicted for a violation of this section, reinstate such person's operator's license, motor vehicle certificate of registration, and license plates and rescind any order requiring such person to comply with section 60-528 without cost to such person upon presentation to the director that, at the time such person was cited for a violation of this section, a current and effective automobile liability policy or proof of financial responsibility was in existence for the motor vehicle or trailer at the time the citation was issued.

Source: Laws 2005, LB 274, § 167.

60-3,168 Proof of financial responsibility required; violation; penalty.

It shall be unlawful for any owner to pay the required registration fees when the owner does not, at the time of paying the fees or during the entire registration period, have or keep in effect a current and effective automobile liability policy or proof of financial responsibility. Any person violating this section shall be guilty of a Class IV misdemeanor. The penalty shall be mandatory and shall not be suspended by a court.

Source: Laws 2005, LB 274, § 168.

60-3,169 Farm truck; unauthorized use; penalty.

Any person using a truck or combination of a truck or truck-tractor and trailer registered as a farm truck pursuant to section 60-3,146 in violation of the uses authorized shall be guilty of a Class IV misdemeanor and shall be required to register such truck or combination of a truck or truck-tractor and trailer as a commercial motor vehicle or commercial trailer for the entire registration period in which the violation occurred.

Source: Laws 2005, LB 274, § 169.

60-3,170 Violations; penalty.

Any person, firm, association, partnership, limited liability company, or corporation which violates any provision of the Motor Vehicle Registration Act for which a penalty is not otherwise provided shall be guilty of a Class III misdemeanor.

Source: Laws 2005, LB 274, § 170.

60-3,171 Fraud; penalty.

Any person who registers or causes to be registered any motor vehicle or trailer in the name of any person other than the owner thereof, who gives a false or fictitious name or false or fictitious residential and mailing address of the registrant, or who gives false information pursuant to section 60-386 in any application for registration of a motor vehicle or trailer shall be deemed guilty of a Class III misdemeanor.

Source: Laws 2005, LB 274, § 171.

60-3,172 Registration in incorrect county; penalty.

Any person applying for a motor vehicle or trailer registration in any county or location other than that specified in section 60-385 or 60-3,198 shall be deemed guilty of a Class IV misdemeanor.

Source: Laws 2005, LB 274, § 172.

60-3,173 Commercial trucks and truck-tractors; commercial vehicles; prohibited acts; penalty.

Any person who fails to return a registration certificate and license plate when required to do so under subdivision (5)(b) of section 60-3,147 and any person, firm, association, or corporation who otherwise violates section 60-3,147 or 60-3,148 shall be guilty of a Class IV misdemeanor.

Source: Laws 2005, LB 274, § 173.

60-3,174 Well-boring apparatus and well-servicing equipment; prohibited acts; penalty.

Any person using a motor vehicle or trailer registered as well-boring apparatus and well-servicing equipment for any purpose other than that for which the special equipment license plate was issued shall be guilty of a Class IV misdemeanor and shall be required to register such motor vehicle or trailer as a commercial motor vehicle or commercial trailer for the entire year in which the violation occurred.

Source: Laws 2005, LB 274, § 174.

60-3,175 Historical vehicles; prohibited acts; penalty.

It shall be unlawful to own or operate a motor vehicle or trailer with historical license plates in violation of section 60-3,130, 60-3,131, or 60-3,134. Upon conviction of a violation of any provision of such sections, a person shall be guilty of a Class V misdemeanor.

Source: Laws 2005, LB 274, § 175; Laws 2006, LB 663, § 34.

60-3,176 Undercover plates; prohibited acts; penalty.

Any person who receives information pertaining to undercover license plates 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.

Source: Laws 2005, LB 274, § 176.

60-3,177 Nonresident vehicles; prohibited acts.

It shall be unlawful to operate trucks, truck-tractors, trailers, or buses owned by nonresidents who are not in compliance with sections 60-3,178 to 60-3,182 or any agreement executed under the authority granted in sections 60-3,180 to 60-3,182.

Source: Laws 2005, LB 274, § 177.

60-3,178 Nonresident vehicles; requirements; exception; reciprocity.

Trucks, truck-tractors, trailers, or buses, from a jurisdiction other than Nebraska, entering Nebraska shall be required to comply with all the laws and regulations of any nature imposed on Nebraska trucks, truck-tractors, trailers, or buses unless the jurisdiction in which such trucks, truck-tractors, trailers, or

buses are domiciled grants reciprocity comparable to that extended by the laws of Nebraska.

Source: Laws 2005, LB 274, § 178.

60-3,179 Nonresident vehicles; nonreciprocal jurisdiction; fees.

In case a jurisdiction is not reciprocal as to license fees on trucks, truck-tractors, trailers, or buses, the owners of nonresident trucks, truck-tractors, trailers, or buses from those jurisdictions shall pay the same license fees as are charged residents of this state. The owners of all trucks, truck-tractors, trailers, or buses from other jurisdictions doing intrajurisdiction hauling in this state shall pay the same registration fees as those paid by residents of this state unless such trucks, truck-tractors, trailers, or buses are registered as a part of a fleet in interjurisdiction commerce as provided in section 60-3,198.

Source: Laws 2005, LB 274, § 179.

60-3,180 Nonresident vehicles; reciprocal agreements authorized; terms and conditions; revision; absence of agreement; effect.

(1) In order to effect the purposes of sections 60-3,178, 60-3,179, and 60-3,198, the director shall have the power, duty, and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, including states, districts, territories, or possessions of the United States and foreign countries, states, or provinces, granting to trucks, truck-tractors, trailers, or buses or owners of trucks, truck-tractors, trailers, or buses which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges, and exemptions from the payment, wholly or partially, of any fees or other charges imposed upon such trucks, truck-tractors, trailers, or buses or owners with respect to the operation or ownership of such trucks, truck-tractors, trailers, or buses under the laws of this state. Such agreements or arrangements shall provide that trucks, truck-tractors, trailers, or buses registered or licensed in this state when operated upon the highways of such other jurisdictions shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to trucks, truck-tractors, trailers, or buses from such jurisdictions in this state. Such agreements may be revised or replaced by new agreements from time to time in order to promote greater uniformity among the jurisdictions. The director may withdraw from any agreement when he or she determines that it is for the best interest of the State of Nebraska upon thirty days' notice.

(2) Notwithstanding any provisions of the Nebraska statutes to the contrary or inconsistent herewith, such agreements may provide, with respect to resident or nonresident fleets of apportionable vehicles which are engaged in interjurisdiction and intrajurisdiction commerce, that the registrations of such fleets can be apportioned between this state and other jurisdictions in which such fleets operate in accordance with the method set out in section 60-3,198. A Nebraska-based fleet owner may include trucks, truck-tractors, trailers, and buses in such apportionable fleet by listing them in an application filed pursuant to section 60-3,198, and any trucks, truck-tractors, trailers, and buses so included shall be eligible for permanent license plates issued pursuant to section 60-3,203. The registration procedure required by section 60-3,198 shall be the only such registration required, and when the fees required by such

section and section 60-3,203 if applicable have been paid, the trucks, truck-tractors, trailers, and buses listed on the application shall be duly registered as part of such Nebraska-based fleet and shall be considered part of a Nebraska-based fleet for purposes of taxation.

(3) In the absence of an agreement or arrangement with any jurisdiction, the director is authorized to examine the laws and requirements of such jurisdiction and to declare the extent and nature of exemptions, benefits, and privileges to be extended to trucks, truck-tractors, trailers, and buses registered in such jurisdiction or to the owners or operators of such trucks, truck-tractors, trailers, and buses.

When no written agreement or arrangement has been entered into with another jurisdiction or declaration issued pertaining thereto, any trucks, truck-tractors, trailers, and buses properly registered in such jurisdiction, and for which evidence of compliance is supplied, may be operated in this state and shall receive the same exemptions, benefits, and privileges granted by such other jurisdiction to trucks, truck-tractors, trailers, and buses registered in this state.

Source: Laws 2005, LB 274, § 180.

60-3,181 Truck, truck-tractor, trailer, or bus; no additional registration or license fees required; when.

(1) When a truck, truck-tractor, trailer, or bus has been duly registered in any jurisdiction, including those that are part of a Nebraska-based fleet registered pursuant to section 60-3,198, no additional registration or license fees, except as provided in section 60-3,203 if applicable, shall be required in this state when such truck, truck-tractor, trailer, or bus is operated in combination with any truck, truck-tractor, trailer, or bus properly licensed or registered in accordance with sections 60-3,179 to 60-3,182 and 60-3,198 or agreements, arrangements, or declarations pursuant to such sections.

(2) Properly registered means a truck, truck-tractor, trailer, or bus licensed or registered in one of the following: (a) The jurisdiction where the person registering the truck, truck-tractor, trailer, or bus has his or her legal residence; (b) the jurisdiction in which a truck, truck-tractor, trailer, or bus is registered, when the operation in which such truck, truck-tractor, trailer, or bus is used has a principal place of business therein, and from or in which the truck, truck-tractor, trailer, or bus is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled and the truck, truck-tractor, trailer, or bus is assigned to such principal place of business; or (c) the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration, the person registering the truck, truck-tractor, trailer, or bus has licensed the truck, truck-tractor, trailer, or bus as required by such jurisdiction.

Source: Laws 2005, LB 274, § 181.

60-3,182 Agreements, arrangements, declarations, and amendments; requirements.

(1) All agreements, arrangements, declarations, and amendments authorized by sections 60-3,179 to 60-3,182 and 60-3,198 shall be in writing and shall become effective when filed in the office of the director.

(2) Agreements or arrangements entered into or declarations issued under the authority of sections 60-3,179 to 60-3,182 may contain provisions denying exemptions, benefits, and privileges granted in such agreements, arrangements, or declarations to any truck, truck-tractor, trailer, or bus which is in violation of conditions stated in such agreements, arrangements, or declarations.

Source: Laws 2005, LB 274, § 182.

60-3,183 Registration under International Registration Plan Act; disciplinary actions; procedure; enforcement.

(1) The director may revoke, suspend, cancel, or refuse to issue or renew a registration certificate under sections 60-3,198 to 60-3,203 upon receipt of notice under the federal Performance and Registration Information Systems Management Program that the ability of the applicant or registration certificate holder to operate has been terminated or denied by a federal agency.

(2) 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 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 2005, LB 274, § 183; Laws 2006, LB 853, § 3.

60-3,184 Motor vehicle tax and fee; terms, defined.

For purposes of sections 60-3,184 to 60-3,190:

(1) Automobile means passenger cars, trucks, utility vehicles, and vans up to and including seven tons;

(2) Motor vehicle means every motor vehicle and trailer subject to the payment of registration fees or permit fees under the laws of this state and every cabin trailer registered for operation upon the highways of this state;

(3) Motor vehicle fee means the fee imposed upon motor vehicles under section 60-3,190;

(4) Motor vehicle tax means the tax imposed upon motor vehicles under section 60-3,185; and

(5) Registration period means the period from the date of registration pursuant to section 60-392 to the first day of the month following one year after such date.

Source: Laws 2005, LB 274, § 184; Laws 2007, LB286, § 52.

60-3,185 Motor vehicle tax; exemptions.

A motor vehicle tax is imposed on motor vehicles registered for operation upon the highways of this state, except:

(1) Motor vehicles exempt from the registration fee in section 60-3,160;

(2) One motor vehicle owned and used for his or her personal transportation by a disabled or blind veteran of the United States Armed Forces as defined in section 77-202.23 whose disability or blindness is recognized by the United States Department of Veterans Affairs and who was discharged or otherwise separated with a characterization of honorable if an application for the exemption has been approved under subsection (1) of section 60-3,189;

(3) Motor vehicles owned by Indians as defined in 25 U.S.C. 479;

(4) Motor vehicles owned by a member of the United States Armed Forces serving in this state in compliance with military or naval orders if such person is a resident of a state other than Nebraska;

(5) Motor vehicles owned by the state and its governmental subdivisions and exempt as provided in subdivision (1)(a) or (b) of section 77-202;

(6) Motor vehicles owned and used exclusively by an organization or society qualified for a tax exemption provided in subdivision (1)(c) or (d) of section 77-202 if an application for the exemption provided in this subdivision has been approved under subsection (2) of section 60-3,189; and

(7) Trucks, trailers, or combinations thereof registered under section 60-3,198.

Source: Laws 2005, LB 274, § 185.

60-3,186 Motor vehicle tax; notice; taxes and fees; payment; proceeds; disposition.

(1) The county treasurer or designated county official shall annually determine the motor vehicle tax on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to section 60-3,187 and cause a notice of the amount of the tax to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department and shall be mailed on or before the first day of the last month of the registration period.

(2)(a) The motor vehicle tax, motor vehicle fee, registration fee, sales tax, and any other applicable taxes and fees shall be paid to the county treasurer or designated county official prior to the registration of the motor vehicle for the following registration period. If the motor vehicle being registered has been transferred as a gift or for a nominal amount, any sales tax owed by the transferor on the purchase of the motor vehicle shall have been paid or be paid to the county treasurer or designated county official prior to the registration of the motor vehicle for the following registration period.

(b) After retaining one percent of the motor vehicle tax proceeds collected for costs, the remaining motor vehicle tax proceeds shall be allocated to each county, local school system, school district, city, and village in the tax district in which the motor vehicle has situs.

(c)(i) Twenty-two percent of the remaining motor vehicle tax proceeds shall be allocated to the county, (ii) sixty percent shall be allocated to the local school system or school district, and (iii) eighteen percent shall be allocated to the city or village, except that (A) if the tax district is not in a city or village, forty percent shall be allocated to the county, and (B) in counties containing a city of the metropolitan class, eighteen percent shall be allocated to the county and twenty-two percent shall be allocated to the city or village.

(d) The amount allocated to a local school system shall be distributed to school districts in the same manner as property taxes.

(3) Proceeds from the motor vehicle tax shall be treated as property tax revenue for purposes of expenditure limitations, matching of state or federal funds, and other purposes.

Source: Laws 2005, LB 274, § 186; Laws 2006, LB 248, § 1; Laws 2007, LB286, § 53.

60-3,187 Motor vehicle tax schedules; calculation of tax.

(1) The motor vehicle tax schedules are set out in this section.

(2) The motor vehicle tax shall be calculated by multiplying the base tax times the fraction which corresponds to the age category of the vehicle as shown in the following table:

YEAR	FRACTION
First	1.00
Second	0.90
Third	0.80
Fourth	0.70
Fifth	0.60
Sixth	0.51
Seventh	0.42
Eighth	0.33
Ninth	0.24
Tenth and Eleventh	0.15
Twelfth and Thirteenth	0.07
Fourteenth and older	0.00

(3) The base tax shall be:

(a) Automobiles and motorcycles — An amount determined using the following table:

Value when new	Base tax
Up to $3,999	$ 25
$4,000 to $5,999	35
$6,000 to $7,999	45
$8,000 to $9,999	60
$10,000 to $11,999	100
$12,000 to $13,999	140
$14,000 to $15,999	180
$16,000 to $17,999	220
$18,000 to $19,999	260
$20,000 to $21,999	300
$22,000 to $23,999	340
$24,000 to $25,999	380
$26,000 to $27,999	420
$28,000 to $29,999	460
$30,000 to $31,999	500
$32,000 to $33,999	540
$34,000 to $35,999	580
$36,000 to $37,999	620
$38,000 to $39,999	660
$40,000 to $41,999	700
$42,000 to $43,999	740
$44,000 to $45,999	780
$46,000 to $47,999	820
$48,000 to $49,999	860
$50,000 to $51,999	900
$52,000 to $53,999	940
$54,000 to $55,999	980
$56,000 to $57,999	1,020
$58,000 to $59,999	1,060
$60,000 to $61,999	1,100

$62,000 to $63,999	1,140
$64,000 to $65,999	1,180
$66,000 to $67,999	1,220
$68,000 to $69,999	1,260
$70,000 to $71,999	1,300
$72,000 to $73,999	1,340
$74,000 to $75,999	1,380
$76,000 to $77,999	1,420
$78,000 to $79,999	1,460
$80,000 to $81,999	1,500
$82,000 to $83,999	1,540
$84,000 to $85,999	1,580
$86,000 to $87,999	1,620
$88,000 to $89,999	1,660
$90,000 to $91,999	1,700
$92,000 to $93,999	1,740
$94,000 to $95,999	1,780
$96,000 to $97,999	1,820
$98,000 to $99,999	1,860
$100,000 and over	1,900

(b) Assembled automobiles — $60

(c) Assembled motorcycles — $25

(d) Cabin trailers, up to one thousand pounds — $10

(e) Cabin trailers, one thousand pounds and over and less than two thousand pounds — $25

(f) Cabin trailers, two thousand pounds and over — $40

(g) Recreational vehicles, less than eight thousand pounds — $160

(h) Recreational vehicles, eight thousand pounds and over and less than twelve thousand pounds — $410

(i) Recreational vehicles, twelve thousand pounds and over — $860

(j) Assembled recreational vehicles and buses shall follow the schedules for body type and registered weight

(k) Trucks — Over seven tons and less than ten tons — $360

(l) Trucks — Ten tons and over and less than thirteen tons — $560

(m) Trucks — Thirteen tons and over and less than sixteen tons — $760

(n) Trucks — Sixteen tons and over and less than twenty-five tons — $960

(o) Trucks — Twenty-five tons and over — $1,160

(p) Buses — $360

(q) Trailers other than semitrailers — $10

(r) Semitrailers — $110

(s) Minitrucks — $50

(4) For purposes of subsection (3) of this section, truck means all trucks and combinations of trucks except those trucks, trailers, or combinations thereof registered under section 60-3,198, and the tax is based on the gross vehicle weight rating as reported by the manufacturer.

(5) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(6) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle tax in the first registration period and ninety-five percent of the initial motor vehicle tax in the second registration period.

(7) Assembled cabin trailers, assembled recreational vehicles, and assembled buses shall be designated as sixth-year motor vehicles in their first year of registration for purposes of the schedules.

(8) When a motor vehicle is registered which is required to have a title branded as previous salvage pursuant to section 60-175, the motor vehicle tax shall be reduced by twenty-five percent.

Source: Laws 2005, LB 274, § 187; Laws 2006, LB 248, § 2; Laws 2006, LB 765, § 7; Laws 2010, LB650, § 28.
Operative date January 1, 2011.

60-3,188 Motor vehicle tax; valuation of vehicles; department; duties.

(1) The department shall determine motor vehicle manufacturers' suggested retail prices, gross vehicle weight ratings, and vehicle identification numbers using appropriate commercially available electronic information on a system designated by the department.

(2) For purposes of section 60-3,187, the department shall determine the value when new of automobiles and determine the gross vehicle weight ratings of motor vehicles over seven tons. The department shall make a determination for such makes and models of automobiles and motor vehicles already manufactured or being manufactured and shall, as new makes and models of such automobiles and motor vehicles become available to Nebraska residents, continue to make such determinations. The value when new is the manufacturer's suggested retail price for such new automobile or motor vehicle of that year using the manufacturer's body type and model with standard equipment and not including transportation or delivery cost.

(3) Any person or taxing official may, within ten days after a determination has been certified by the department, file objections in writing with the department stating why the determination is incorrect.

(4) Any affected person may file an objection to the determination of the department not more than fifteen days before and not later than thirty days after the registration date. The objection must be filed in writing with the department and state why the determination is incorrect.

(5) Upon the filing of objections the department shall fix a time for a hearing. Any party may introduce evidence in reference to the objections, and the department shall act upon the objections and make a written order, mailed to the objector within seven days after the order. The final decision by the department may be appealed. The appeal shall be to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the written order. In an appeal, the department's determination of the manufacturer's suggested retail price shall be presumed to be correct and the party challenging the determination shall bear the burden of proving it incorrect.

Source: Laws 2005, LB 274, § 188; Laws 2007, LB286, § 54.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

60-3,189 Tax exemption; procedure; appeal.

(1) A veteran of the United States Armed Forces who qualifies for an exemption from the motor vehicle tax under subdivision (2) of section 60-3,185 shall apply for the exemption to the county treasurer or designated county official not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer or designated county official shall approve or deny the application and notify the applicant of his or her decision within twenty days after the filing of the application. An applicant may appeal the denial of an application to the county board of equalization within twenty days after the date the notice was mailed.

(2) An organization which qualifies for an exemption from the motor vehicle tax under subdivision (6) of section 60-3,185 shall apply for the exemption to the county treasurer or designated county official not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. For a newly acquired motor vehicle, an application for exemption must be made within thirty days after the purchase date. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer or designated county official shall examine the application and recommend either exempt or nonexempt status to the county board of equalization within twenty days after receipt of the application. The county board of equalization, after a hearing on ten days' notice to the applicant and after considering the recommendation of the county treasurer or designated county official and any other information it may obtain, shall approve or deny the exemption on the basis of law and of rules and regulations adopted and promulgated by the Tax Commissioner within thirty days after the hearing. The county board of equalization shall mail or deliver its final decision to the applicant and the county treasurer or designated county official within seven days after the date of decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the final decision.

Source: Laws 2005, LB 274, § 189; Laws 2007, LB334, § 10.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

60-3,190 Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment.

(1) A motor vehicle fee is imposed on all motor vehicles registered for operation in this state. An owner of a motor vehicle which is exempt from the imposition of a motor vehicle tax pursuant to section 60-3,185 shall also be exempt from the imposition of the motor vehicle fee imposed pursuant to this section.

(2) The county treasurer or designated county official shall annually determine the motor vehicle fee on each motor vehicle registered in the county

based on the age of the motor vehicle pursuant to this section and cause a notice of the amount of the fee to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department, shall be combined with the notice of the motor vehicle tax, and shall be mailed on or before the first day of the last month of the registration period.

(3) The motor vehicle fee schedules are set out in this subsection and subsection (4) of this section. Except for automobiles with a value when new of less than $20,000, and for assembled automobiles, the fee shall be calculated by multiplying the base fee times the fraction which corresponds to the age category of the automobile as shown in the following table:

YEAR	FRACTION
First through fifth	1.00
Sixth through tenth	.70
Eleventh and over	.35

(4) The base fee shall be:

(a) Automobiles, with a value when new of less than $20,000, and assembled automobiles — $5

(b) Automobiles, with a value when new of $20,000 through $39,999 — $20

(c) Automobiles, with a value when new of $40,000 or more — $30

(d) Motorcycles — $10

(e) Recreational vehicles and cabin trailers — $10

(f) Trucks over seven tons and buses — $30

(g) Trailers other than semitrailers — $10

(h) Semitrailers — $30

(i) Minitrucks — $10.

(5) The motor vehicle tax, motor vehicle fee, and registration fee shall be paid to the county treasurer or designated official prior to the registration of the motor vehicle for the following registration period. After retaining one percent of the motor vehicle fee collected for costs, the remaining proceeds shall be remitted to the State Treasurer for credit to the Motor Vehicle Fee Fund. The State Treasurer shall return funds from the Motor Vehicle Fee Fund remitted by a county treasurer or designated county official which are needed for refunds or credits authorized by law.

(6)(a) The Motor Vehicle Fee Fund is created. On or before the last day of each calendar quarter, the State Treasurer shall distribute all funds in the Motor Vehicle Fee Fund as follows: (i) Fifty percent to the county treasurer of each county, amounts in the same proportion as the most recent allocation received by each county from the Highway Allocation Fund; and (ii) fifty percent to the treasurer of each municipality, amounts in the same proportion as the most recent allocation received by each municipality from the Highway Allocation Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) Funds from the Motor Vehicle Fee Fund shall be considered local revenue available for matching state sources.

(c) All receipts by counties and municipalities from the Motor Vehicle Fee Fund shall be used for road, bridge, and street purposes.

(7) For purposes of subdivisions (4)(a), (b), (c), and (f) of this section, automobiles or trucks includes all trucks and combinations of trucks or truck-tractors, except those trucks, trailers, or semitrailers registered under section 60-3,198, and the fee is based on the gross vehicle weight rating as reported by the manufacturer.

(8) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(9) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle fee for six registration periods.

(10) Assembled vehicles other than assembled automobiles shall follow the schedules for the motor vehicle body type.

Source: Laws 2005, LB 274, § 190; Laws 2007, LB286, § 55; Laws 2010, LB650, § 29.
Operative date January 1, 2011.

Cross References

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

60-3,191 Repealed. Laws 2007, LB 286, § 57.

60-3,192 International Registration Plan Act; act, how cited.

Sections 60-3,192 to 60-3,206 shall be known and may be cited as the International Registration Plan Act.

Source: Laws 2005, LB 274, § 192.

60-3,193 International Registration Plan Act; purposes of act.

The purposes of the International Registration Plan Act are to:

(1) Promote and encourage the fullest possible use of the highway system by authorizing registration of fleets of apportionable vehicles and the recognition of apportionable vehicles apportioned in other jurisdictions, thus contributing to the economic and social development and growth of the jurisdictions;

(2) Implement the concept of one registration plate for one vehicle;

(3) Grant exemptions from payment of certain fees when such grants are reciprocal; and

(4) Grant reciprocity to fleets of apportionable vehicles and provide for the continuance of reciprocity granted to those vehicles that are not eligible for apportioned registration under the act.

Source: Laws 2005, LB 274, § 193.

60-3,193.01 International Registration Plan; adopted.

For purposes of the Motor Vehicle Registration Act, the International Registration Plan is adopted and incorporated by reference as the plan existed on January 1, 2010.

Source: Laws 2008, LB756, § 10; Laws 2009, LB331, § 4; Laws 2010, LB805, § 2.
Effective date July 15, 2010.

60-3,194 Director; powers and duties.

The director shall ratify and do all things necessary to effectuate the International Registration Plan Act with such exceptions as are deemed advisable and such changes as are necessary.

Source: Laws 2005, LB 274, § 194.

60-3,195 Conflict with rules and regulations; effect.

If any provision of the International Registration Plan Act conflicts with rules and regulations adopted and promulgated by the department, the provisions of the act shall control.

Source: Laws 2005, LB 274, § 195.

60-3,196 Apportionable vehicles; International Registration Plan; effect.

Apportionable vehicles registered as provided in section 60-3,198 and apportionable vehicles covered under the International Registration Plan shall be deemed fully registered in all jurisdictions where apportioned or granted reciprocity for any type of movement or operation. The registrant must have proper interjurisdiction or intrajurisdiction authority from the appropriate regulatory agency of each jurisdiction of this state if not exempt from regulation by the regulatory agency.

Source: Laws 2005, LB 274, § 196; Laws 2006, LB 853, § 4; Laws 2007, LB239, § 3; Laws 2008, LB756, § 14.

60-3,197 Payment of apportioned fees; effect.

The payment to the base jurisdiction for all member and cooperating jurisdictions of apportioned fees due under the International Registration Plan Act discharges the responsibility of the registrant for payment of such apportioned fees to individual member and cooperating jurisdictions, except that the base jurisdiction shall cooperate with other declared jurisdictions in connection with applications and fees paid.

Source: Laws 2005, LB 274, § 197.

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 apportionable 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.

Cross References

Administrative Procedure Act, see section 84-920.

60-3,199 Reciprocity agreement or existing arrangement; validity.

Nothing in sections 60-3,179 to 60-3,182 or 60-3,198 shall affect the validity or operation of any reciprocity agreement or arrangement presently existing and in effect between Nebraska and any other jurisdiction, and all such agreements or arrangements shall continue until specifically canceled by the director or replaced by a new agreement or arrangement in accordance with the provisions of such sections.

Source: Laws 2005, LB 274, § 199.

60-3,200 Apportionable vehicle; refund of fees; when.

Whenever an apportionable vehicle is registered by the owner under section 60-362 and the motor vehicle tax and motor vehicle fee imposed in sections 60-3,185 and 60-3,190 have been paid on that apportionable vehicle for the registration period, and then the apportionable vehicle is registered under section 60-3,198, the Division of Motor Carrier Services, upon application of

the owner of the apportionable vehicle on forms prescribed by the division, shall certify that the apportionable vehicle is registered under section 60-3,198 and that the owner is entitled to receive the refunds of the unused fees for the balance of the registration period as prescribed in sections 60-395 to 60-397.

Source: Laws 2005, LB 274, § 200.

60-3,201 Motor Carrier Division Cash Fund; created; use; investment.

There is hereby created the Motor Carrier Division Cash Fund. Such fund shall be used by the Division of Motor Carrier Services of the department to carry out the operations of the division including the administration of titling and registering vehicles in interjurisdiction commerce and its duties pursuant to section 66-1415. 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 2005, LB 274, § 201.

Cross References

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

60-3,202 Registration fees; collection and distribution; procedure; Motor Vehicle Tax Fund; created; use; investment.

(1) As registration fees are received by the Division of Motor Carrier Services of the department pursuant to section 60-3,198, the division shall remit the fees to the State Treasurer, less a collection fee of three percent of thirty percent of the registration fees collected. The collection fee shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The State Treasurer shall credit the remainder of the thirty percent of the fees collected to the Motor Vehicle Tax Fund and the remaining seventy percent of the fees collected to the Highway Trust Fund.

(2) On or before the last day of each quarter of the calendar year, the State Treasurer shall distribute all funds in the Motor Vehicle Tax Fund to the county treasurer or designated county official of each county in the same proportion as the number of original apportionable vehicle registrations in each county bears to the total of all original registrations within the state in the registration year immediately preceding.

(3) Upon receipt of motor vehicle tax funds from the State Treasurer, the county treasurer or designated county official shall distribute such funds to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county.

(4) In the event any taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, any apportionment of motor vehicle tax funds to which such taxing district would have been entitled shall be apportioned to the successor taxing district which has assumed the functions of the annexed, merged, dissolved, or absorbed taxing district.

(5) On or before March 1 of each year, the department shall furnish to the State Treasurer a tabulation showing the total number of original apportionable vehicle registrations in each county for the immediately preceding calendar

year, which shall be the basis for computing the distribution of motor vehicle tax funds as provided in subsection (2) of this section.

(6) The Motor Vehicle Tax 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.

Source: Laws 2005, LB 274, § 202; Laws 2007, LB334, § 11.

Cross References

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

60-3,203 Permanent license plate; application; fee; renewal fee; replacement permanent plate; registration certificate replacement; deletion from fleet registration; fee.

(1) Upon application and payment of the fees required pursuant to this section and section 60-3,198, the Division of Motor Carrier Services of the department shall issue to the owner of any fleet of apportionable commercial vehicles with a base registration in Nebraska a permanent license plate for each truck, truck-tractor, and trailer in the fleet. The application shall be accompanied by a fee of three dollars for each truck or truck-tractor and six dollars per trailer. The application shall be on a form developed by the division.

(2) Fleets of apportionable vehicles license plates shall display a distinctive license plate provided by the department pursuant to this section.

(3) Any license plate issued pursuant to this section shall remain affixed to the front of the truck or truck-tractor or to the rear of the trailer or semitrailer as long as the apportionable vehicle is registered pursuant to section 60-3,198 by the owner making the original application pursuant to subsection (1) of this section. Upon transfer of ownership of the truck, truck-tractor, or trailer or transfer of ownership of the fleet or at any time the truck, truck-tractor, or trailer is no longer registered pursuant to section 60-3,198, the license plate shall cease to be active and shall be processed according to the rules and regulations of the department.

(4) The renewal fee for each permanent plate shall be two dollars and shall be assessed and collected in each license year after the year in which the permanent license plates are initially issued at the time all other renewal fees are collected pursuant to section 60-3,198 unless a truck, truck-tractor, or trailer has been deleted from the fleet registration.

(5)(a) If a permanent license plate is lost or destroyed, the owner shall submit an affidavit to that effect to the division prior to any deletion of the truck, truck-tractor, or trailer from the fleet registration. If the truck, truck-tractor, or trailer is not deleted from the fleet registration, a replacement permanent license plate may be issued upon application and payment of a fee of three dollars for each truck or truck-tractor and six dollars per trailer. The application for a replacement permanent plate shall be on a form developed by the division.

(b) If the registration certificate for any fleet vehicle is lost or stolen, the division shall collect a fee of one dollar for replacement of such certificate.

(6) If a truck, truck-tractor, or trailer for which a permanent license plate has been issued pursuant to this section is deleted from the fleet registration due to loss of possession by the registrant, the plate shall be returned to the division.

(7) The registrant shall be liable for the full amount of the registration fee due for any truck, truck-tractor, or trailer not deleted from the fleet registration renewal.

(8) All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 203.

60-3,204 Registration fee; calculation.

The registration fee for apportionable vehicles shall be determined as follows:

(1) Divide the injurisdiction distance by the total fleet distance generated during the preceding year;

(2) Determine the total fees required under the laws of each jurisdiction for full registration of each apportionable vehicle at the regular annual or applicable fees or for the unexpired portion of the registration year; and

(3) Multiply the sum obtained under subdivision (2) of this section by the quotient obtained under subdivision (1) of this section.

Source: Laws 2005, LB 274, § 204.

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.

Cross References

Administrative Procedure Act, see section 84-920.
International Fuel Tax Agreement Act, see section 66-1401.

60-3,206 International Registration Plan Act; violations; penalty.

Any person, firm, association, partnership, limited liability company, or corporation which violates any provision of the International Registration Plan Act is guilty of a Class III misdemeanor.

Source: Laws 2005, LB 274, § 206.

60-3,207 Snowmobiles; terms, defined.

For purposes of sections 60-3,207 to 60-3,219:

(1) Dealer means any person engaged in the business of selling snowmobiles at wholesale or retail;

(2) Manufacturer means a person, partnership, limited liability company, or corporation engaged in the business of manufacturing snowmobiles; and

(3) Operate means to ride in or on and control the operation of a snowmobile.

Source: Laws 2005, LB 274, § 207.

60-3,208 Snowmobiles; registration required.

Except as otherwise provided in sections 60-3,207 to 60-3,219, no person shall operate any snowmobile within the State of Nebraska unless such snowmobile has been registered in accordance with sections 60-3,209 to 60-3,213.

Source: Laws 2005, LB 274, § 208.

60-3,209 Snowmobiles; registration; application.

Application for registration shall be made to the county treasurer or designated county official in such form as the director prescribes and shall state the name and address of the applicant, state a description of the snowmobile, including color, manufacturer, and identification number, and be signed by at least one owner. Application forms shall be made available through the county treasurer's or designated county official's office of each county in this state. Upon receipt of the application and the appropriate fee as provided in section 60-3,210, the snowmobile shall be registered by the county treasurer or designated county official and a validation decal shall be provided which shall be affixed to the upper half of the snowmobile in such manner as the director prescribes. Snowmobiles owned by a dealer and operated for demonstration or testing purposes shall be exempt from affixing validation decals to the snowmobile but are required to carry a valid validation decal with the snowmobile at all times. Application for registration shall be made within fifteen days after the date of purchase.

Source: Laws 2005, LB 274, § 209.

60-3,210 Snowmobiles; registration; fee.

(1) The fee for registration of each snowmobile shall be:

(a) For each snowmobile owned by a person other than dealers or manufacturers, eight dollars per year and one dollar for a duplicate or transfer;

(b) For all snowmobiles owned by a dealer and operated for demonstration or testing purposes, twenty-five dollars per year; and

(c) For all snowmobiles owned by a manufacturer and operated for research, testing, experimentation, or demonstration purposes, one hundred dollars per year.

(2) Snowmobile dealer and manufacturer registrations shall not be transferable.

Source: Laws 2005, LB 274, § 210.

60-3,211 Snowmobiles; certificate of registration and validation decal; expiration; renewal; procedure.

(1) The certificate of registration and validation decal issued shall be valid for two years. The registration period for snowmobiles shall expire on the last day

of September two years after the year of issuance, and renewal shall become delinquent on the first day of the following month.

(2) Such registration may be renewed every two years in the same manner as provided for the original registration.

(3) Every owner of a snowmobile shall renew his or her registration in the manner prescribed in section 60-3,209 upon payment of the registration fees provided in section 60-3,210.

Source: Laws 2005, LB 274, § 211.

60-3,212 Snowmobiles; refund of fees; when.

Upon transfer of ownership of any snowmobile or in case of loss of possession because of fire, theft, dismantlement, or junking, its registration shall expire, and the registered owner may, by returning the registration certificate and after making affidavit of such transfer or loss to the county official who issued the certificate, receive a refund of that part of the unused fees based on the number of unexpired months remaining in the registration period, except that when such snowmobile is transferred within the same calendar month in which acquired, no refund shall be allowed for such month.

Source: Laws 2005, LB 274, § 212.

60-3,213 Snowmobiles; state or political subdivision; fee waived.

A registration number shall be issued without the payment of a fee for snowmobiles owned by the state or a political subdivision thereof upon application therefor.

Source: Laws 2005, LB 274, § 213.

60-3,214 Snowmobiles; registration; exemptions.

No registration shall be required for snowmobiles:

(1) Owned and used by the United States, another state, or a political subdivision thereof;

(2) Registered in a country other than the United States and temporarily used within this state;

(3) Covered by a valid license of another state and which have not been within this state for more than thirty consecutive days; and

(4) Which are operated only on land owned or leased by the owner thereof.

Source: Laws 2005, LB 274, § 214.

60-3,215 Snowmobiles; licensing or registration by political subdivision prohibited.

No political subdivision of this state shall require licensing or registration of snowmobiles covered by the provisions of sections 60-3,207 to 60-3,219.

Source: Laws 2005, LB 274, § 215.

60-3,216 Snowmobiles; reciprocity; when.

Snowmobiles properly registered in another state shall be allowed to operate in the State of Nebraska on a reciprocal basis.

Source: Laws 2005, LB 274, § 216.

60-3,217 Snowmobiles; fees; disposition.

(1) The county treasurers and designated county officials shall act as agents for the department in the collection of snowmobile registration fees. Twenty-five cents from the funds collected for each such registration shall be retained by the county.

(2) The remaining amount of the fees from registration of snowmobiles shall be remitted to the State Treasurer who shall credit twenty-five percent to the General Fund and seventy-five percent to the Nebraska Snowmobile Trail Cash Fund.

Source: Laws 2005, LB 274, § 217.

60-3,218 Nebraska Snowmobile Trail Cash Fund; created; use; investment; Game and Parks Commission; establish rules and regulations.

(1) There is hereby created the Nebraska Snowmobile Trail Cash Fund into which shall be deposited the portion of the fees collected from snowmobile registration as provided in section 60-3,217.

(2) The Game and Parks Commission shall use the money in the Nebraska Snowmobile Trail Cash Fund for the operation, maintenance, enforcement, planning, establishment, and marking of snowmobile trails throughout the state and for the acquisition by purchase or lease of real property to carry out the provisions of this section.

(3) The commission shall establish rules and regulations pertaining to the use and maintenance of snowmobile trails.

(4) Transfers may be made from the Nebraska Snowmobile Trail Cash Fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Nebraska Snowmobile Trail 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 2005, LB 274, § 218; Laws 2009, First Spec. Sess., LB3, § 35.
Effective date November 21, 2009.

Cross References

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

60-3,219 Snowmobiles; records.

The department shall keep a record of each snowmobile registered, employing such methods and practices as may be necessary to maintain an accurate record.

Source: Laws 2005, LB 274, § 219.

60-3,220 Registration, rules, regulations, and orders under prior law; effect.

(1) The repeal of Chapter 60, article 3, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Registration Act is not intended to affect the validity of the registration of any motor vehicle, trailer, or snowmobile or the validity of any license plate, permit, renewal tab, or tonnage sticker issued under Chapter 60, article 3, and in existence on such date. All such license plates, permits, renewal tabs, and tonnage stickers are valid under the

Motor Vehicle Registration Act as if registration had taken place under such act.

(2) The rules, regulations, and orders of the Director of Motor Vehicles and the Department of Motor Vehicles issued under Chapter 60, article 3, shall remain in effect as if issued under the Motor Vehicle Registration Act unless changed or eliminated by the director or the department to the extent such power is statutorily granted to the director and department.

Source: Laws 2005, LB 274, § 220.

60-3,221 Towing of trailers; restrictions; section; how construed.

(1) Except as otherwise provided in the Motor Vehicle Registration Act:

(a) A cabin trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle or apportionable vehicle;

(iii) Farm truck;

(iv) Local truck;

(v) Recreational vehicle; or

(vi) Bus;

(b) A utility trailer shall only be towed by:

(i) A properly registered passenger car;

(ii) A properly registered commercial motor vehicle or apportionable vehicle;

(iii) A properly registered farm truck;

(iv) A properly registered local truck;

(v) A properly registered recreational vehicle;

(vi) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(vii) A properly registered well-boring apparatus;

(viii) A dealer-plated vehicle;

(ix) A personal-use dealer-plated vehicle; or

(x) A properly registered bus;

(c) A farm trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle; or

(iii) Farm truck;

(d) A commercial trailer shall only be towed by:

(i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(ii) A properly registered local truck;

(iii) A properly registered well-boring apparatus;

(iv) A properly registered commercial motor vehicle or apportionable vehicle;

(v) A dealer-plated vehicle;

(vi) A personal-use dealer-plated vehicle;

(vii) A properly registered bus; or

(viii) A properly registered farm truck;

(e) A fertilizer trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle or apportionable vehicle;

(iii) Farm truck; or

(iv) Local truck;

(f) A pole and cable reel trailer shall only be towed by a properly registered:

(i) Commercial motor vehicle or apportionable vehicle; or

(ii) Local truck;

(g) A dealer-plated trailer shall only be towed by:

(i) A dealer-plated vehicle;

(ii) A properly registered passenger car;

(iii) A properly registered commercial motor vehicle or apportionable vehicle;

(iv) A properly registered farm truck; or

(v) A personal-use dealer-plated vehicle; and

(h) Trailers registered pursuant to section 60-3,198 as part of an apportioned fleet shall only be towed by:

(i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(ii) A properly registered local truck;

(iii) A properly registered well-boring apparatus;

(iv) A properly registered commercial motor vehicle or apportionable vehicle;

(v) A dealer-plated vehicle;

(vi) A personal-use dealer-plated vehicle;

(vii) A properly registered bus; or

(viii) A properly registered farm truck.

(2) Nothing in this section shall be construed to prohibit any motor vehicle or trailer from displaying dealer license plates or In Transit stickers authorized by section 60-376.

Source: Laws 2007, LB349, § 2.

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.

ARTICLE 4

MOTOR VEHICLE OPERATORS' LICENSES

(e) GENERAL PROVISIONS

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

(e) GENERAL PROVISIONS

60-462 Act, how cited.

Sections 60-462 to 60-4,188 shall be known and may be cited as the Motor Vehicle Operator's License Act.

Source: Laws 1937, c. 141, § 31, p. 523; C.S.Supp.,1941, § 60-434; R.S.1943, § 60-402; R.S.1943, (1988), § 60-402; Laws 1989, LB 284, § 2; Laws 1989, LB 285, § 12; Laws 1990, LB 980, § 6; Laws 1991, LB 44, § 1; Laws 1993, LB 105, § 4; Laws 1993, LB 370, § 65; Laws 1993, LB 420, § 1; Laws 1994, LB 211, § 1; Laws 1995, LB 467, § 6; Laws 1996, LB 323, § 1; Laws 1997, LB 210, § 2; Laws 1997, LB 256, § 4; Laws 1998, LB 320, § 1; Laws 2001, LB 38, § 5; Laws 2001, LB 574, § 1; Laws 2003, LB 209, § 1; Laws 2003, LB 562, § 2; Laws 2005, LB 76, § 2; Laws 2006, LB 853, § 6; Laws 2007, LB415, § 1; Laws 2008, LB911, § 1.

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, 2010:

(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; Laws 2010, LB805, § 3.
Effective date July 15, 2010.

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.

60-463 Definitions, where found.

For purposes of the Motor Vehicle Operator's License Act, the definitions found in sections 60-463.01 to 60-478 shall be used.

Source: Laws 1989, LB 285, § 13; Laws 1993, LB 370, § 66; Laws 1993, LB 420, § 2; Laws 2001, LB 38, § 6; Laws 2007, LB415, § 2; Laws 2008, LB911, § 3.

60-465 Commercial motor vehicle, defined.

(1) Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating of eleven thousand seven hundred ninety-four kilograms or more (twenty-six thousand one pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than four thousand five hundred thirty-six kilograms (ten thousand pounds);

(b) Has a gross vehicle weight rating of eleven thousand seven hundred ninety-four or more kilograms (twenty-six thousand one pounds or more);

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under 49 C.F.R. part 172, subpart F.

(2) Commercial motor vehicle does not include (a) a farm vehicle, other than a combination of truck-tractors and semitrailers, which is (i) controlled and operated by a farmer, including operation by employees or family members of the farmer, (ii) used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm or ranch, (iii) not used in the operations of a common or contract motor carrier, and (iv) used within one hundred fifty miles of the farmer's farm or ranch, (b) any recreational vehicle as defined in section 60-347 or motor vehicle towing a cabin trailer as defined in sections 60-314 and 60-339, (c) any emergency vehicle operated by a public or volunteer fire department, or (d) any motor vehicle owned or operated by the United States Department of Defense or Nebraska National Guard when such motor vehicle is driven by persons identified in section 60-4,131.01.

Source: Laws 1989, LB 285, § 15; Laws 2005, LB 76, § 4; Laws 2005, LB 274, § 235; Laws 2006, LB 853, § 8; Laws 2006, LB 1007, § 5; Laws 2010, LB805, § 4.
Effective date July 15, 2010.

60-465.01 Department, defined.

Department means the Department of Motor Vehicles.

Source: Laws 2008, LB911, § 4.

60-468.01 Full legal name, defined.

Full legal name means an individual's first name, middle name, and last or surname without use of initials or nicknames.

Source: Laws 2008, LB911, § 5.

60-470.02 Interactive wireless communication device, defined.

Interactive wireless communication device means any wireless electronic communication device that provides for voice or data communication between two or more parties, including, but not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages, or a laptop computer.

Source: Laws 2007, LB415, § 3.

60-471 Motor vehicle, defined.

Motor vehicle means all vehicles propelled by any power other than muscular power. Motor vehicle does not include (1) self-propelled chairs used by persons who are disabled, (2) farm tractors, (3) farm tractors used occasionally outside general farm usage, (4) road rollers, (5) vehicles which run only on rails or tracks, (6) electric personal assistive mobility devices as defined in section 60-618.02, and (7) off-road vehicles, including, but not limited to, golf carts, go-carts, riding lawn mowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663.

Source: Laws 1989, LB 285, § 21; Laws 1993, LB 370, § 68; Laws 2002, LB 1105, § 445; Laws 2010, LB650, § 30.
Operative date January 1, 2011.

60-475.01 Principal residence, defined.

Principal residence means the location in Nebraska where a person resides at the time of application even if such residence is temporary.

Source: Laws 2008, LB911, § 6.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-479 Sections; applicability.

Sections 60-479.01 to 60-4,111.01 and 60-4,182 to 60-4,188 shall apply to any operator's license subject to the Motor Vehicle Operator's License Act.

Source: Laws 1989, LB 285, § 29; Laws 1993, LB 370, § 72; Laws 1995, LB 467, § 7; Laws 1997, LB 210, § 3; Laws 1997, LB 256, § 5; Laws 2001, LB 38, § 10; Laws 2001, LB 574, § 2; Laws 2003, LB 209, § 2; Laws 2008, LB911, § 7.

60-479.01 Section; applicability; fraudulent document recognition training.

This section applies beginning on an implementation date designated by the director pursuant to section 60-462.02. All persons handling source documents or engaged in the issuance of new, renewed, or reissued operators' licenses or state identification cards shall have periodic fraudulent document recognition training.

Source: Laws 2008, LB911, § 8.

60-480 Operators' licenses; classification.

Operators' licenses issued by the Department of Motor Vehicles pursuant to the Motor Vehicle Operator's License Act shall be classified as follows:

(1) Class O license. The operator's license which authorizes the person to whom it is issued to operate on highways any motor vehicle except a commercial motor vehicle or motorcycle;

(2) Class M license. The operator's license or endorsement on a Class O license, provisional operator's permit, learner's permit, school permit, or commercial driver's license which authorizes the person to whom it is issued to operate a motorcycle on highways;

(3) CDL-commercial driver's license. The operator's license which authorizes the person to whom it is issued to operate a class of commercial motor vehicles or any motor vehicle, except a motorcycle, on highways;

(4) RCDL-restricted commercial driver's license. The class of commercial driver's license which, when held with an annual seasonal permit, authorizes a seasonal commercial motor vehicle operator as defined in section 60-4,146.01 to operate any Class B Heavy Straight Vehicle or Class C Small Vehicle commercial motor vehicle for purposes of a farm-related or ranch-related service industry as defined in such section within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served as provided in such section or any other motor vehicle, except a motorcycle, on highways;

(5) POP-provisional operator's permit. A motor vehicle operating permit with restrictions issued pursuant to section 60-4,120.01 to a person who is at least sixteen years of age but less than eighteen years of age which authorizes the

person to operate any motor vehicle except a commercial motor vehicle or motorcycle;

(6) SCP-school permit. A permit issued to a student between fourteen years and two months of age and sixteen years of age for the purpose of driving in accordance with the requirements of section 60-4,124;

(7) FMP-farm permit. A permit issued to a person for purposes of operating farm tractors and other motorized implements of farm husbandry on highways in accordance with the requirements of section 60-4,126;

(8) LPC-learner's permit. A permit which when held in conjunction with a Class O license or commercial driver's license authorizes a person to operate a commercial motor vehicle for learning purposes when accompanied by a person who is at least twenty-one years of age;

(9) LPD-learner's permit. A permit issued in accordance with the requirements of section 60-4,123 to a person at least fifteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, for learning purposes when accompanied by a licensed operator who is at least twenty-one years of age and who possesses a valid operator's license issued by this state or another state;

(10) LPE-learner's permit. A permit issued to a person at least fourteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, while learning to drive in preparation for application for a school permit;

(11) EDP-employment driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,129 and 60-4,130;

(12) IIP-ignition interlock permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, which is equipped with an ignition interlock device;

(13) SEP-seasonal permit. A permit issued to a person who holds a restricted commercial driver's license authorizing the person to operate a commercial motor vehicle, as prescribed by section 60-4,146.01, for no more than one hundred eighty consecutive days in any twelve-month period. The seasonal permit shall be valid and run from the date of original issuance of the permit for one hundred eighty days and from the date of annual revalidation of the permit; and

(14) MHP-medical hardship driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,130.01 and 60-4,130.02.

Source: Laws 1989, LB 285, § 30; Laws 1990, LB 980, § 8; Laws 1993, LB 105, § 6; Laws 1993, LB 420, § 4; Laws 1998, LB 320, § 2; Laws 1999, LB 704, § 4; Laws 2001, LB 387, § 3; Laws 2005, LB 675, § 1; Laws 2008, LB736, § 1.

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.

60-484 Operator's license required, when; state identification card; application.

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of the State of Nebraska until the person has obtained an operator's license for that purpose.

(b) Application for an operator's license may be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner's certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) In addition to any other information and questions necessary to comply with the requirements and purposes of the act, the applicant (i) shall provide his or her name, age, post office address, place of residence unless the applicant is a program participant under the Address Confidentiality Act, date of birth, gender, social security number, and brief description of himself or herself, (ii) may complete the voter registration portion pursuant to section 32-308, (iii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iv) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness . . . yes . . . no

(II) experienced vertigo or multiple episodes of dizziness or fainting . . . yes . . . no

(III) experienced disorientation . . . yes . . . no

(IV) experienced seizures . . . yes . . . no

(V) experienced impairment of memory, memory loss . . . yes . . . no

Please explain: . . . . . .

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) . . . yes . . . no

Please explain: . . . . . .

(C) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? . . . yes . . . no

Please explain, including how the above affects your ability to drive: . . . . . , and (v) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license shall be made under oath or affirmation of the applicant.

(e) The social security number shall not be printed on the operator's license and shall be used only (i) to furnish driver record information to the United

States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, or (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent.

(f)(i) Except for an individual under the age of eighteen years, each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity by a valid Nebraska operator's license, a valid Nebraska learner's permit, a valid Nebraska school permit, a valid operator's license from another state or jurisdiction of the United States, a certified birth certificate, a certified birth registration, a valid United States passport, a valid United States military identification card, United States military discharge papers, other United States-based identification as approved by the director, or information preserved in the digital system implemented under section 60-484.01.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate, a certified birth registration, or other reliable proof of his or her identity and age accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant may be required to furnish proof to the examiner that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of this state until the person has obtained an operator's license for that purpose.

(b) Application for an operator's license or a state identification card shall be made in a manner prescribed by the department. Such application may be made to department personnel in any county. Department personnel shall conduct the examination of the applicant and deliver to each successful applicant an issuance certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) The applicant (i) shall provide his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, evidence of identity as required by subdivision (2)(f) of this subsection, and a brief physical description of himself or herself, (ii) may complete the voter registration portion pursuant to section 32-308, (iii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iv) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness . . . yes . . . no

(II) experienced vertigo or multiple episodes of dizziness or fainting . . . yes . . . no

(III) experienced disorientation . . . yes . . . no

(IV) experienced seizures . . . yes . . . no

(V) experienced impairment of memory, memory loss . . . yes . . . no

Please explain: . . . . . .

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) . . . yes . . . no

Please explain: . . . . . .

(C) Since the issuance of your last driver's license/permit, has your health or medical condition changed or worsened? . . . yes . . . no

Please explain, including how the above affects your ability to drive: . . . . . , and (v) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license or state identification card shall include a signed oath, affirmation, or declaration of the applicant that the information provided on the application for the license or card is true and correct.

(e) The social security number shall not be printed on the operator's license or state identification card and shall be used only (i) to furnish information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent, or (v) to furnish information to the Department of Revenue under section 77-362.02.

(f)(i) Each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity with documents containing a photograph or with nonphoto identity documents which include his or her full legal name and date of birth. Such documents shall include, but not be limited to, any valid Nebraska operator's license or Nebraska state identification card, a valid operator's license or identification card from another state or jurisdiction of the United States, a certified birth certificate, a valid United States passport, or any other United States-based identification as approved by the director.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate or, if such individual is unable to provide a certified copy of his or her birth certificate, other reliable proof of his or her identity and age, as required in subdivision (2)(f)(i) of this section, accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant also may be required to furnish proof to department personnel that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(iii) An applicant may present other documents as proof of identification and age designated by the director. Any documents accepted shall be recorded according to a written exceptions process established by the director.

Source: Laws 1929, c. 148, § 1, p. 512; C.S.1929, § 60-401; Laws 1937, c. 141, § 11, p. 510; C.S.Supp.,1941, § 60-401; R.S.1943, § 60-403; Laws 1945, c. 141, § 1, p. 446; Laws 1947, c. 207, § 1, p. 675; Laws 1957, c. 366, § 35, p. 1269; Laws 1961, c. 315, § 2, p. 998; Laws 1961, c. 316, § 2, p. 1007; Laws 1984, LB 811, § 2; Laws 1986, LB 878, § 1; Laws 1986, LB 153, § 9; Laws 1987, LB 300, § 1; R.S.1943, (1988), § 60-403; Laws 1989, LB 285, § 35; Laws 1991, LB 457, § 44; Laws 1992, LB 1178, § 1; Laws 1994, LB 76, § 571; Laws 1994, LB 211, § 2; Laws 1995, LB 467, § 10; Laws 1996, LB 939, § 1; Laws 1996, LB 1073, § 1; Laws 1997, LB 635, § 20; Laws 1999, LB 147, § 1; Laws 1999, LB 704, § 5; Laws 2000, LB 1317, § 7; Laws 2001, LB 34, § 1; Laws 2001, LB 387, § 4; Laws 2001, LB 574, § 5; Laws 2003, LB 228, § 12; Laws 2004, LB 208, § 4; Laws 2004, LB 559, § 1; Laws 2005, LB 1, § 1; Laws 2005, LB 76, § 5; Laws 2008, LB911, § 9; Laws 2010, LB879, § 3.
Operative date July 15, 2010.

Cross References

Address Confidentiality Act, see section 42-1201.

60-484.01 Digital system authorized.

It is the intent of the Legislature to authorize the Department of Motor Vehicles to begin issuing operators' licenses and state identification cards using digital images and digital signatures and to allow for electronic renewal of certain operators' licenses and state identification cards. The department shall implement such a digital system.

Source: Laws 2001, LB 574, § 3; Laws 2005, LB 1, § 2.

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 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 federal, state, or local 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; Laws 2010, LB805, § 5. Effective date July 15, 2010.

60-490 Operators' licenses; state identification cards; expiration; renewal.

(1) Operators' licenses issued to persons required to use bioptic or telescopic lenses as provided in section 60-4,118 shall expire annually on the licensee's birthday for all such licenses issued prior to January 1, 2007, and on the licensee's birthday in the second year after issuance, unless specifically restricted to a shorter renewal period as determined under section 60-4,118, for all such licenses issued on or after January 1, 2007.

(2) Except for state identification cards issued to persons less than twenty-one years of age, all state identification cards expire on the cardholder's birthday in the fifth year after issuance. A state identification card issued to a person who is less than twenty-one years of age expires on his or her twenty-first birthday or on his or her birthday in the fifth year after issuance, whichever comes first.

(3) Except as otherwise provided in subsection (1) of this section and section 60-4,147.05 and except for operators' licenses issued to persons less than twenty-one years of age, operators' licenses issued pursuant to the Motor Vehicle Operator's License Act expire on the licensee's birthday in the fifth year after issuance. An operator's license issued to a person less than twenty-one years of age expires on his or her twenty-first birthday. Except as otherwise provided in section 60-4,147.05, the Department of Motor Vehicles shall mail out a renewal notice for each operator's license at least thirty days before the expiration of the operator's license.

(4)(a) The expiration date shall be stated on each operator's license or state identification card.

(b) Except as otherwise provided in section 60-4,147.05, licenses and state identification cards issued to persons who are twenty-one years of age or older which expire under this section may be renewed within a ninety-day period before the expiration date. Any person who is twenty-one years of age or older and who is the holder of a valid operator's license or state identification card

may renew his or her license or card prior to the ninety-day period before the expiration date on such license or card if such applicant furnishes proof that he or she will be absent from the state during the ninety-day period prior to such expiration date.

(c) A person who is twenty years of age may apply for an operator's license or a state identification card within sixty days prior to his or her twenty-first birthday. The operator's license or state identification card may be issued within ten days prior to such birthday.

(d) A person who is under twenty years of age and who holds a state identification card may apply for renewal within a ninety-day period prior to the expiration date.

Source: Laws 1989, LB 285, § 34; Laws 1990, LB 742, § 2; Laws 1993, LB 7, § 1; Laws 1998, LB 309, § 3; Laws 1998, LB 320, § 3; Laws 1999, LB 704, § 8; Laws 2001, LB 574, § 7; Laws 2005, LB 1, § 4; Laws 2005, LB 76, § 6; Laws 2006, LB 1008, § 1.

60-493 Organ and tissue donation; county treasurer or examiner; distribute brochure; additional information; department; duty.

When a person applies for an operator's license or state identification card, the county treasurer or examiner of the Department of Motor Vehicles shall distribute a brochure provided by an organ and tissue procurement organization and approved by the Department of Health and Human Services containing a description and explanation of the Revised Uniform Anatomical Gift Act to each person applying for a new or renewal license or card.

If an individual desires to receive additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska as indicated on an application or examiner's certificate under section 60-484, 60-4,144, or 60-4,181, the department shall notify a representative of the federally designated organ procurement organization for Nebraska within five working days of the name and address of such individual.

Source: Laws 1977, LB 115, § 3; R.S.1943, (1988), § 60-406.01; Laws 1989, LB 285, § 43; Laws 1992, LB 1178, § 2; Laws 1996, LB 1044, § 280; Laws 1999, LB 704, § 10; Laws 2001, LB 34, § 2; Laws 2004, LB 559, § 2; Laws 2007, LB296, § 229; Laws 2010, LB1036, § 31.
Operative date January 1, 2011.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

60-494 Operator's license; state identification card; organ and tissue donation information; department; duty.

(1) Each operator's license and state identification card shall include a special notation on the front of the license or card if the licensee or cardholder is at least sixteen years of age and indicates on the application or examiner's certificate under section 60-484, 60-4,144, or 60-4,181 his or her wish to be an organ donor, a tissue donor, or both.

(2) The status as an organ donor, a tissue donor, or both shall be renewed upon renewal of each license or card if the licensee or cardholder, at the time of renewal, indicates the desire to renew the status and the notation authorized

in subsection (1) of this section has been marked. The status as an organ donor, a tissue donor, or both is not changed by the suspension, cancellation, revocation, or impoundment of the license or card.

(3) Any person whose operator's license or state identification card indicates his or her status as an organ donor, a tissue donor, or both may obtain a replacement license or card without a notation of such status. The fee for such replacement license or card shall be the fee provided in section 60-4,115.

(4) A licensee or cardholder may also change his or her status as a donor by (a) Internet access to the Donor Registry of Nebraska, (b) telephone request to the registry, or (c) other methods approved by the federally designated organ procurement organization for Nebraska.

(5) The Department of Motor Vehicles shall electronically transfer to the federally designated organ procurement organization for Nebraska all information which appears on the face of an original or replacement operator's license or state identification card except the image and signature of each person whose license or card includes the notation described in subsection (1) of this section.

Source: Laws 1984, LB 711, § 2; Laws 1985, LB 585, § 1; R.S.1943, (1988), § 60-412.01; Laws 1989, LB 285, § 44; Laws 1992, LB 1178, § 3; Laws 1999, LB 704, § 11; Laws 2001, LB 34, § 3; Laws 2001, LB 574, § 8; Laws 2004, LB 559, § 3; Laws 2010, LB1036, § 32.
Operative date January 1, 2011.

60-495 Organ and tissue donation; rules and regulations; Organ and Tissue Donor Awareness and Education Fund; created; use; investment.

(1) The director shall adopt and promulgate such rules and regulations and prepare and furnish all forms and information necessary to carry out sections 60-493 to 60-495 and the duties of the department under the Revised Uniform Anatomical Gift Act.

(2) The Organ and Tissue Donor Awareness and Education Fund is created. The county treasurer shall remit all funds contributed under sections 60-484, 60-4,144, and 60-4,181 to the State Treasurer for credit to the fund. The Department of Health and Human Services shall administer the Organ and Tissue Donor Awareness and Education Fund for the promotion of organ and tissue donation. The department shall use the fund to assist organizations such as the federally designated organ procurement organization for Nebraska and the State Anatomical Board in carrying out activities which promote organ and tissue donation through the creation and dissemination of educational information. 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 1977, LB 115, § 5; R.S.1943, (1988), § 60-406.03; Laws 1989, LB 285, § 45; Laws 1999, LB 147, § 2; Laws 2010, LB1036, § 33.
Operative date January 1, 2011.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
Revised Uniform Anatomical Gift Act, see section 71-4824.

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.

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, 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; Laws 2010, LB924, § 1.
Effective date July 15, 2010.

60-4,108 Operating motor vehicle during period of suspension, revocation, or impoundment; penalties; juvenile; violation; handled in juvenile court.

(1) It shall be unlawful for any person to operate a motor vehicle during any period that he or she is subject to a court order not to operate any motor vehicle for any purpose or during any period that his or her operator's license has been revoked or impounded pursuant to conviction or convictions for violation of any law or laws of this state, by an order of any court, or by an administrative order of the director. Except as otherwise provided by subsection (3) of this section or by other law, any person so offending 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 motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the operator'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 motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator'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.

(2) It shall be unlawful for any person to operate a motor vehicle (a) during any period that his or her operator's license has been suspended, (b) after a period of revocation but before issuance of a new license, or (c) after a period of impoundment but before the return of the license. Except as provided in subsection (3) of this section, any person so offending shall be guilty of a Class III misdemeanor, and the court may, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court, except that if the person at the time of sentencing shows proof of reinstatement of his or her suspended operator's license, proof of issuance of a new license, or proof of return of the impounded license, the person shall only be fined in an amount not to exceed one hundred dollars. If the court orders the person not to operate a motor vehicle for a period of one year from the date ordered by the court, the court shall also order the operator'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.

(3) If a juvenile whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of this section.

Source: Laws 1957, c. 275, § 2, p. 1002; Laws 1959, c. 293, § 3, p. 1099; Laws 1977, LB 39, § 81; Laws 1979, LB 149, § 1; Laws 1985, LB 356, § 1; Laws 1986, LB 153, § 12; R.S.1943, (1988), § 60-430.01; Laws 1989, LB 285, § 58; Laws 1997, LB 772, § 4; Laws 2001, LB 38, § 25; Laws 2010, LB800, § 34.
Effective date July 15, 2010.

60-4,111.01 Storage or compilation of information; retailer; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.

(1) The Department of Motor Vehicles, the courts, or law enforcement agencies may store or compile information acquired from an operator's license or a state identification card for their statutorily authorized purposes.

(2) Except as otherwise provided in subsection (3) or (4) of this section, no person having use of or access to machine-readable information encoded on an operator's license or a state identification card shall compile, store, preserve, trade, sell, or share such information. Any person who trades, sells, or shares such information shall be guilty of a Class IV felony. Any person who compiles, stores, or preserves such information except as authorized in subsection (3) or (4) of this section shall be guilty of a Class IV felony.

(3)(a) For purposes of compliance with and enforcement of restrictions on the purchase of alcohol, lottery tickets, and tobacco products, a retailer who sells any of such items pursuant to a license issued or a contract under the applicable statutory provision may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The retailer may store only the following information obtained from the license or card: Age and license or card identification number. The retailer shall post a sign at the point of sale of any of such items stating that the license or card will be scanned and that the age and identification number will be stored. The stored information may only be used by a law enforcement agency for purposes of enforcement of the restrictions on the purchase of alcohol, lottery tickets, and tobacco products and may not be shared with any other person or entity. The retailer shall utilize software that stores only the information allowed by this subsection. A programmer for computer software designed to store such information shall certify to the retailer that the software stores only the information allowed by this subsection. Intentional or grossly negligent programming by the programmer which allows for the storage of more than the age and identification number or wrongfully certifying the software shall be a Class IV felony. A retailer who knowingly stores more information than the age and identification number from the operator's license or state identification card shall be guilty of a Class IV felony.

(b) Information scanned, compiled, stored, or preserved pursuant to subdivision (a) of this subsection may not be retained longer than eighteen months unless required by state or federal law.

(4) In order to approve a negotiable instrument, an electronic funds transfer, or a similar method of payment, a person having use of or access to machine-readable information encoded on an operator's license or a state identification card may:

(a) Scan, compile, store, or preserve such information in order to provide the information to a check services company subject to and in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on January 1, 2010, for the purpose of effecting, administering, or enforcing a transaction requested by the holder of the license or card or preventing fraud or other criminal activity; or

(b) Scan and store such information only as necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability or to resolve a dispute or inquiry by the holder of the license or card.

(5) Except as provided in subdivision (4)(a) of this section, information scanned, compiled, stored, or preserved pursuant to this section may not be traded or sold to or shared with a third party; used for any marketing or sales

purpose by any person, including the retailer who obtained the information; or, unless pursuant to a court order, reported to or shared with any third party. A person who violates this subsection shall be guilty of a Class IV felony.

Source: Laws 2001, LB 574, § 30; Laws 2010, LB261, § 1.
Effective date July 15, 2010.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,112 Sections; applicability.

Sections 60-4,114, 60-4,116, and 60-4,118 to 60-4,130.05 shall apply to the operation of any motor vehicle except a commercial motor vehicle.

Source: Laws 1989, LB 285, § 62; Laws 1991, LB 44, § 2; Laws 1993, LB 105, § 8; Laws 1994, LB 211, § 4; Laws 1998, LB 320, § 4; Laws 2001, LB 38, § 27; Laws 2003, LB 562, § 5; Laws 2008, LB911, § 10.

60-4,113 Examining personnel; appointment; duties; examinations; issuance of certificate; license; state identification card; county treasurer; duties; delivery of license or card.

(1) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. In and for each county in the State of Nebraska, the director shall appoint as his or her agents one or more examiners who shall examine all applicants for an operator's license as provided in section 60-4,114 except as otherwise provided in subsection (8) of section 60-4,122. The director may, in his or her discretion, also appoint one or more examining officers with similar powers as are set forth in section 60-4,114. The same examiner may be assigned to one or more counties by the director. Each county shall furnish office space for the administration of the operator's license examination. The examiner shall conduct the examination of applicants and deliver to each successful applicant a certificate entitling such applicant to secure an operator's license. If the examiner refuses to issue such certificate for cause, he or she shall state such cause in writing and deliver the same to the applicant. The successful applicant shall, within ninety days, present his or her certificate to the county treasurer who shall immediately issue the operator's license and collect the fee therefor. The county treasurer shall report the issuance of such licenses to the department within five days after issuance.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. In and for each county in the State of Nebraska, the director shall appoint as his or her agents one or more department personnel who shall examine all applicants for a state identification card or an operator's license as provided in section 60-4,114 except as otherwise provided in subsection (8) of section 60-4,122. The same department personnel may be assigned to one or more counties by the director. Each county shall furnish office space for the administration of the operator's license examination. The department personnel shall conduct the examination of applicants and deliver to each successful applicant an issuance certificate. The certificate may be presented to the county treasurer of any county within ninety days after issuance, and the county treasurer shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt which is valid for up to

thirty days. If an operator's license is being issued, the receipt shall also authorize driving privileges for such thirty-day period. If the department personnel refuse to issue an issuance certificate for cause, the department personnel shall state such cause in writing and deliver such written cause to the applicant.

(b) The department may provide for the central production and issuance of operators' licenses and state identification cards. Production shall take place at a secure production facility designated by the director. The licenses and cards shall be of such a design and produced in such a way as to discourage, to the maximum extent possible, fraud in applicant enrollment, identity theft, and the forgery and counterfeiting of such licenses and cards. Delivery of an operator's license or state identification card shall be to the mailing address provided by the applicant at the time of application.

Source: Laws 1929, c. 148, § 2, p. 513; C.S.1929, § 60-402; Laws 1937, c. 141, § 12, p. 511; C.S.Supp.,1941, § 60-402; R.S.1943, § 60-404; Laws 1945, c. 142, § 1, p. 454; Laws 1945, c. 141, § 2, p. 447; Laws 1957, c. 366, § 36, p. 1270; Laws 1961, c. 307, § 4, p. 972; Laws 1961, c. 317, § 1, p. 1016; Laws 1961, c. 315, § 3, p. 999; Laws 1961, c. 316, § 3, p. 1009; Laws 1967, c. 389, § 1, p. 1212; Laws 1976, LB 329, § 1; Laws 1977, LB 90, § 3; R.S.1943, (1988), § 60-404; Laws 1989, LB 285, § 64; Laws 1999, LB 704, § 15; Laws 2001, LB 574, § 9; Laws 2008, LB911, § 11.

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.

60-4,117 Issuance of license by county treasurer; form; operator's license or state identification card; delivery; form; county treasurer; duties.

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. Upon presentation of the certificate for an operator's license issued by the examining officer to the applicant for such license, the county treasurer shall issue such license to the applicant. The license shall be in full force and effect until the expiration date thereon, until officially revoked, suspended, canceled by an order of the director, or until ordered revoked or impounded by a court of competent jurisdiction.

(b) The operator's license shall be in a form prescribed by the department. The license may include security features prescribed by the department. The license shall be conspicuously marked Nebraska Operator's License, shall be, to the maximum extent practicable, tamper proof, and shall include the following information:

(i) The name and residential and post office address of the holder;

(ii) The holder's color photograph or digital image;

(iii) A physical description of the holder, including sex, height, weight, and eye and hair colors;

(iv) The holder's date of birth;

(v) The holder's signature;

(vi) The class of motor vehicle which the holder is authorized to operate and any endorsements or restrictions;

(vii) The dates between which the license is valid;

(viii) The organ and tissue donation information specified in section 60-494; and

(ix) Such other facts and information as the director may determine.

(c) Machine-readable information encoded on an operator's license shall be limited to the information appearing on the face of the license.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Upon presentation of an issuance certificate for an operator's license or state identification card issued by department personnel to the applicant, the county treasurer shall collect the applicable fee and surcharge as prescribed in section 60-4,115 and issue a receipt which is valid for up to thirty days. If there is cause for an operator's license to be issued, the receipt shall also authorize driving privileges for such thirty-day period. The license or card shall be delivered as provided in section 60-4,113.

(b) The operator's license and state identification card shall be in a form prescribed by the department. The license and card may include security features prescribed by the department. The license and card shall be conspicuously marked Nebraska Operator's License or Nebraska Identification Card, shall be, to the maximum extent practicable, tamper and forgery proof, and shall include the following information:

(i) The full legal name and principal residence address of the holder;

(ii) The holder's full facial digital image;

(iii) A physical description of the holder, including gender, height, weight, and eye and hair colors;

(iv) The holder's date of birth;

(v) The holder's signature;

(vi) The class of motor vehicle which the holder is authorized to operate and any applicable endorsements or restrictions;

(vii) The issuance and expiration date of the license or card;

(viii) The organ and tissue donation information specified in section 60-494; and

(ix) Such other marks and information as the director may determine.

(c) Each operator's license and state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; race or ethnicity; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

Source: Laws 1929, c. 148, § 4, p. 513; C.S.1929, § 60-404; Laws 1937, c. 141, § 14, p. 512; C.S.Supp.,1941, § 60-404; R.S.1943, § 60-406; Laws 1959, c. 286, § 2, p. 1082; Laws 1961, c. 315, § 4, p. 1000; Laws 1961, c. 316, § 4, p. 1008; Laws 1977, LB 90, § 4; R.S. 1943, (1988), § 60-406; Laws 1989, LB 285, § 67; Laws 2001, LB 34, § 4; Laws 2001, LB 38, § 29; Laws 2001, LB 574, § 12; Laws 2008, LB911, § 13.

60-4,118 Vision requirements; persons with physical impairments; physical or mental incompetence; prohibited act; penalty.

(1) No operator's license shall be granted to any applicant until such applicant satisfies the examiner that he or she possesses sufficient powers of eyesight to enable him or her to obtain a Class O license and to operate a motor vehicle on the highways of this state with a reasonable degree of safety. The Department of Motor Vehicles, with the advice of the Health Advisory Board, shall adopt and promulgate rules and regulations:

(a) Requiring a minimum acuity level of vision. Such level may be obtained through the use of standard eyeglasses, contact lenses, or bioptic or telescopic lenses which are specially constructed vision correction devices which include a lens system attached to or used in conjunction with a carrier lens; and

(b) Requiring a minimum field of vision. Such field of vision may be obtained through standard eyeglasses, contact lenses, or the carrier lens of the bioptic or telescopic lenses.

(2) If a vision aid is used by the applicant to meet the vision requirements of this section, the operator's license of the applicant shall be restricted to the use of such vision aid when operating the motor vehicle. If the applicant fails to meet the vision requirements, the examiner shall require the applicant to present an optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant within ninety days of the applicant's license examination. If the vision reading meets the vision requirements prescribed by the department, the vision requirements of this section shall have been met. If the vision reading demonstrates that the applicant is required to use bioptic or telescopic lenses to operate a motor vehicle, the statement from the optometrist or ophthalmologist shall also indicate when the applicant needs to be reexamined for purposes of meeting the vision requirements for an operator's license as prescribed by the department. If such time period is two years or more after the date of the application, the license shall be valid for two years. If such time period is less than two years, the license shall be valid for such time period.

(3) If the applicant for an operator's license discloses that he or she has any other physical impairment which may affect the safety of operation by such applicant of a motor vehicle, the examiner shall require the applicant to show cause why such license should be granted and, through such personal examination and demonstration as may be prescribed by the director with the advice of the Health Advisory Board, to show the necessary ability to safely operate a motor vehicle on the highways. The director may also require the person to appear before the board or a designee of the board. If the examiner, board, or designee is then satisfied that such applicant has the ability to safely operate a motor vehicle, an operator's license may be issued to the applicant subject, at the discretion of the director, to a limitation to operate only such motor vehicles at such time, for such purpose, and within such area as the license shall designate.

(4)(a) The director may, when requested by a law enforcement officer, when the director has reason to believe that a person may be physically or mentally incompetent to operate a motor vehicle, or when a person's driving record appears to the department to justify an examination, request the advice of the Health Advisory Board and may give notice to the person to appear before an examiner, the board, or a designee of the director for examination concerning the person's ability to operate a motor vehicle safely. Any such request by a law enforcement officer shall be accompanied by written justification for such request and shall be approved by a supervisory law enforcement officer, police chief, or county sheriff.

(b) A refusal to appear before an examiner, the board, or a designee of the director for an examination after notice to do so shall be unlawful and shall result in the immediate cancellation of the person's operator's license by the director.

(c) If the person cannot qualify at the examination by an examiner, his or her operator's license shall be immediately surrendered to the examiner and forwarded to the director who shall cancel the person's operator's license.

(d) If in the opinion of the board the person cannot qualify at the examination by the board, the board shall advise the director. If the director determines after consideration of the advice of the board that the person lacks the physical or mental ability to operate a motor vehicle, the director shall notify the person in writing of the decision. Upon receipt of the notice, the person shall immediately surrender his or her operator's license to the director who shall cancel the person's operator's license.

(e) Refusal to surrender an operator's license on demand shall be unlawful, and any person failing to surrender his or her operator's license as required by this subsection shall be guilty of a Class III misdemeanor.

Source: Laws 1929, c. 148, § 5, p. 514; C.S.1929, § 60-405; Laws 1931, c. 104, § 2, p. 277; Laws 1937, c. 141, § 15, p. 512; C.S.Supp.,1941, § 60-405; R.S.1943, § 60-407; Laws 1945, c. 141, § 4, p. 449; Laws 1949, c. 179, § 11, p. 511; Laws 1951, c. 200, § 1, p. 753; Laws 1955, c. 240, § 1, p. 751; Laws 1955, c. 241, § 1, p. 754; Laws 1957, c. 272, § 1, p. 995; Laws 1959, c. 286, § 3, p. 1082; Laws 1959, c. 292, § 1, p. 1094; Laws 1961, c. 315, § 5, p. 1000; Laws 1961, c. 316, § 5, p. 1009; Laws 1963, c. 358, § 1, p. 1144; Laws 1963, c. 359, § 1, p. 1148; Laws 1965, c. 381, § 1, p. 1230; Laws 1965, c. 219, § 2, p. 637; Laws 1967, c. 234, § 2, p. 621; Laws 1971, LB 725, § 1; Laws 1973, LB 90, § 1; Laws 1974, LB 611, § 1; Laws 1974, LB 821, § 14; Laws 1977, LB 39, § 76; Laws 1984, LB 710, § 1; Laws 1984, LB 811, § 4; Laws 1987, LB 224, § 22; Laws 1988, LB 1093, § 1; Laws 1989, LB 284, § 5; R.S.1943, (1988), § 60-407; Laws 1989, LB 285, § 68; Laws 1990, LB 742, § 3; Laws 1993, LB 564, § 15; Laws 1994, LB 211, § 10; Laws 1995, LB 37, § 9; Laws 1995, LB 467, § 12; Laws 1998, LB 309, § 6; Laws 1998, LB 320, § 6; Laws 1999, LB 585, § 2; Laws 1999, LB 704, § 18; Laws 2001, LB 38, § 30; Laws 2001, LB 387, § 5; Laws 2006, LB 1008, § 3.

60-4,118.02 Health Advisory Board; created; members; terms; meetings.

(1) There is hereby created the Health Advisory Board which shall consist of six health care providers appointed by the director with the advice and recommendation of the Department of Health and Human Services. The members of the board shall consist of one general practice physician, one physician engaged in the practice of ophthalmology, one physician engaged in the practice of orthopedic surgery, one physician engaged in the practice of neurological medicine and surgery, one optometrist, and one psychiatrist. Each member of the board shall be licensed to practice his or her profession pursuant to the Uniform Credentialing Act.

(2) Of the initial members of the board, two shall be appointed for four years, two shall be appointed for three years, and two shall be appointed for two years. Thereafter, each member shall be appointed for a term of four years and until a successor is appointed and qualified. If a vacancy occurs for any reason other than the expiration of a term, the Director of Motor Vehicles may appoint a person licensed in the same type of professional practice as the member being

replaced to serve out the unexpired term. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The board shall meet as necessary at the call of the director. At the initial meeting of the board following completion of the initial appointments, the board shall select from among its members a chairperson and shall designate any other officers or committees as it deems necessary. The board may select officers and committees annually or as necessary to fill vacancies and to carry out duties of the board.

Source: Laws 1994, LB 211, § 6; Laws 1996, LB 1044, § 281; Laws 2007, LB296, § 230; Laws 2007, LB463, § 1174.

Cross References

Uniform Credentialing Act, see section 38-101.

60-4,118.05 Age requirements; license issued; when.

(1) No operator's license referred to in section 60-4,118 shall, under any circumstances, be issued to any person who has not attained the age of seventeen years.

(2) No operator's license shall be issued to a person under eighteen years of age applying for an operator's license under section 60-4,118 unless such person:

(a) Has possessed a valid provisional operator's permit for at least a twelve-month period beginning on the date of issuance of such person's provisional operator's permit; and

(b) Has not accumulated three or more points pursuant to section 60-4,182 during the twelve-month period immediately preceding the date of the application for the operator's license.

(3) The department may waive the written examination and the driving test required under section 60-4,118 for any person seventeen to twenty-one years of age applying for his or her initial operator's license if he or she has been issued a provisional operator's permit. The department shall not waive the written examination and the driving test required under this section if the person is applying for a commercial driver's license or permit or if the operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the provisional operator's permit.

Source: Laws 2001, LB 38, § 31; Laws 2008, LB911, § 14.

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, 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; Laws 2010, LB924, § 2. Effective date July 15, 2010.

60-4,119 Operators' licenses; state identification cards; color photograph or digital image; exception; procedure.

(1) All state identification cards and operators' licenses, except farm permits and except as otherwise provided in subsection (2) of this section and section 60-4,120, shall include a color photograph or a digital image of the cardholder or licensee as provided in section 60-484.02. State identification cards and operators' licenses shall be issued by the county treasurer or the Department of Motor Vehicles. The director shall negotiate and enter into a contract to provide the necessary equipment, supplies, and forms for the issuance of the licenses and cards. All costs incurred by the Department of Motor Vehicles under this section shall be paid by the state out of appropriations made to the department. All costs of taking the photographs or digital images shall be paid by the issuer from the fees provided to the issuer pursuant to section 60-4,115.

(2) A person who is out of the state at the time of renewal of his or her operator's license may apply for a license without a photograph upon payment of a fee as provided in section 60-4,115. The license may be issued at any time within one year after the expiration of the original license. Such application shall be made to the department, and the department shall issue the license.

(3) Any operator's license and any state identification card issued to a minor as defined in section 53-103.23, as such definition may be amended from time to time by the Legislature, shall be of a distinct designation, of a type prescribed by the director, from the operator's license or state identification card of a person who is not a minor.

Source: Laws 1977, LB 90, § 1; Laws 1978, LB 574, § 3; Laws 1981, LB 46, § 1; Laws 1982, LB 877, § 1; Laws 1984, LB 811, § 3; Laws

1986, LB 575, § 1; Laws 1989, LB 284, § 4; R.S.1943, (1988), § 60-406.04; Laws 1989, LB 285, § 69; Laws 1990, LB 980, § 9; Laws 1993, LB 201, § 1; Laws 1995, LB 467, § 13; Laws 1999, LB 704, § 19; Laws 2001, LB 574, § 13; Laws 2005, LB 1, § 6; Laws 2010, LB861, § 80.
Effective date July 15, 2010.

60-4,120 Operator's license; state identification card; duplicate or replacement.

(1) Except as provided in subsection (4) of this section for persons temporarily out of the state, any person duly licensed or holding a valid state identification card issued under the Motor Vehicle Operator's License Act who loses his or her operator's license or card may obtain a duplicate upon filing with the county treasurer or the Department of Motor Vehicles an application showing such loss and furnishing proof of identification in accordance with section 60-484. If satisfied that the loss is genuine, the issuer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate license or card. No more than two duplicates of a license or card may be issued in this manner. Upon the issuance of any duplicate or replacement license or card, the license or card from which the duplicate or replacement is issued shall be void.

(2) If any person changes his or her name because of marriage or divorce or by court order or a common-law name change, he or she shall apply to the county treasurer for a replacement operator's license or state identification card and furnish proof of identification in accordance with section 60-484. If any person changes his or her address, the person shall apply to the county treasurer for a replacement operator's license or state identification card and furnish satisfactory evidence of such change. The application shall be made within sixty days after the change of name or address. The license or card shall be issued upon payment of the fee prescribed in section 60-4,115.

(3) In the event a mutilated and unreadable operator's license is held by any person duly licensed under the act or a mutilated and unreadable state identification card which was issued under the act is held by a person, such person may obtain a replacement license or card upon showing the original mutilated or unreadable license or card to the county treasurer. A replacement license or card may be issued, without a photograph, to any person who is out of the state at the time of application for the replacement license or card. Such license or card shall state on its face that it shall become invalid thirty days after such person resumes residence in the state. If the county treasurer is satisfied that the license or card is mutilated or unreadable, the county treasurer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a replacement license or card.

(4) If any person duly licensed under the act loses his or her operator's license or if any holder of a state identification card loses his or her card while temporarily out of the state, he or she may apply for a duplicate operator's license or card without a photograph by filing with the county treasurer an application and affidavit showing such loss. Upon the officer being satisfied that the loss is genuine, the officer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate operator's license or card without a photograph. Upon the issuance of the duplicate, the original license or card shall be void.

(5) Any person holding a valid operator's license or state identification card without a photograph shall surrender such license or card to the treasurer of his or her county of residence within thirty days after resuming residency in this state. After the thirty-day period, such license or card shall be considered invalid. Upon the timely surrender of the license or card and payment of the fee prescribed in section 60-4,115, such person shall be issued an operator's license or card with a color photograph or digital image of the licensee included.

(6) An application form for a replacement or duplicate operator's license or state identification card shall include a voter registration portion pursuant to section 32-308 and the following specific question: Do you wish to register to vote as part of this application process?

(7) An applicant may obtain a replacement or duplicate operator's license or state identification card pursuant to subsection (1), (3), or (4) of this section by electronic means in a manner prescribed by the department. If the applicant has a digital image and digital signature preserved in the digital system, the replacement or duplicate shall be issued with the preserved digital image and digital signature.

Source: Laws 1929, c. 148, § 9, p. 517; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 517; Laws 1941, c. 176, § 2, p. 689; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-415; Laws 1945, c. 141, § 8, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 10, p. 1005; Laws 1961, c. 316, § 10, p. 1015; Laws 1967, c. 234, § 7, p. 626; Laws 1969, c. 506, § 2, p. 2083; Laws 1971, LB 134, § 1; Laws 1971, LB 371, § 1; Laws 1972, LB 1296, § 2; Laws 1977, LB 90, § 6; Laws 1978, LB 606, § 1; Laws 1981, LB 46, § 3; Laws 1984, LB 811, § 6; Laws 1986, LB 575, § 2; Laws 1989, LB 284, § 9; R.S.1943, (1988), § 60-415; Laws 1989, LB 285, § 70; Laws 1993, LB 201, § 2; Laws 1993, LB 126, § 1; Laws 1994, LB 76, § 572; Laws 1998, LB 309, § 7; Laws 2001, LB 574, § 14; Laws 2005, LB 1, § 7.

60-4,120.01 Provisional operator's permit; application; issuance; operation restrictions.

(1)(a) Any person who is at least sixteen years of age but less than eighteen years of age may be issued a provisional operator's permit by the Department of Motor Vehicles. The provisional operator's permit shall expire on the applicant's eighteenth birthday.

(b) No provisional operator's permit shall be issued to any person unless such person:

(i) Has possessed a valid LPD-learner's permit, LPE-learner's permit, or SCP-school permit for at least a six-month period beginning on the date of issuance of such person's LPD-learner's permit, LPE-learner's permit, or SCP-school permit; and

(ii) Has not accumulated three or more points pursuant to section 60-4,182 during the six-month period immediately preceding the date of the application for the provisional operator's permit.

(c) The requirements for the provisional operator's permit prescribed in subdivisions (2)(a) and (b) of this section may be completed prior to the applicant's sixteenth birthday. A person may apply for a provisional operator's

permit and take the driving test and the written examination, if required, at any time within sixty days prior to his or her sixteenth birthday upon proof of age in the manner provided in section 60-484.

(2) In order to obtain a provisional operator's permit, the applicant shall present (a)(i) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (A) the effects of the consumption of alcohol on a person operating a motor vehicle, (B) occupant protection systems, (C) risk assessment, and (D) railroad crossing safety and (ii) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (b) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation including at least ten hours of motor vehicle operation between sunset and sunrise, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. If the applicant presents such a certificate, the applicant shall be required to successfully complete a driving test administered by the department. The written examination shall be waived if the applicant has been issued a Nebraska LPD-learner's permit or has been issued a Nebraska LPE-learner's permit and such permit is valid or has been expired for no more than one year. However, the department shall not waive the written examination if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPD-learner's or LPE-learner's permit. Upon presentation by the applicant of a form prescribed by the department showing successful completion of the driver safety course, the written examination and driving test may be waived. Upon presentation of the certificate, the written examination but not the driving test may be waived. The examiner shall waive the written examination and the driving test if the applicant has been issued a school permit and such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the school permit.

(3)(a) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the period beginning at 6 a.m. and ending at 12 midnight except when he or she is en route to or from his or her residence to his or her place of employment or a school activity. The holder of a provisional operator's permit may operate a motor vehicle on the highways of this state at any hour of the day or night if accompanied by a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state.

(b) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the first six months of holding the permit with no more than one passenger who is not an immediate family member and who is under nineteen years of age.

(c) The holder of a provisional operator's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state.

(d) Enforcement of subdivisions (a), (b), and (c) of this subsection shall be accomplished only as a secondary action when the holder of the provisional operator's permit has been cited or charged with a violation of some other law.

(4) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each provisional operator's permit.

Source: Laws 1998, LB 320, § 7; Laws 1999, LB 704, § 20; Laws 2001, LB 387, § 6; Laws 2001, LB 574, § 15; Laws 2005, LB 1, § 8; Laws 2005, LB 675, § 2; Laws 2007, LB415, § 4; Laws 2008, LB911, § 15.

60-4,122 Operator's license; state identification card; renewal procedure; law examination; exceptions.

(1) Except as otherwise provided in subsections (2), (3), and (8) of this section, no original or renewal operator's license shall be issued to any person until such person has demonstrated his or her ability to operate a motor vehicle safely as provided in section 60-4,114.

(2) Except as otherwise provided in this section and section 60-4,127, any person who renews his or her Class O or Class M license shall demonstrate his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 only at the discretion of department personnel, except that a person required to use bioptic or telescopic lenses shall be required to demonstrate his or her ability to drive and maneuver a motor vehicle safely each time he or she renews his or her license.

(3) Any person who renews his or her Class O or Class M license prior to or within one year after its expiration may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state as provided in subdivision (3)(c) of section 60-4,114 if his or her driving record abstract maintained in the computerized records of the department shows that such person's license is not suspended, revoked, or canceled.

(4) Except for operators' licenses issued to persons required to use bioptic or telescopic lenses, any person who renews his or her operator's license which has been valid for fifteen months or less shall not be required to take any examination required under section 60-4,114.

(5) Any person who renews a state identification card shall appear before department personnel and present his or her current state identification card or shall follow the procedure for electronic renewal in subsection (9) of this section. Proof of identification shall be required as prescribed in sections 60-484 and 60-4,181.

(6) A nonresident who applies for an initial operator's license in this state and who holds a valid operator's license from another state which is his or her state of residence may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she surrenders to the examiner his or her valid out-of-state operator's license.

(7) An applicant for an original operator's license may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she has been issued a Nebraska LPD-learner's permit that is valid or has been expired for no more than one year. The written examination shall not be waived if the original operator's license being applied for contains a class or endorse-

ment which is different from the class or endorsement of the Nebraska LPD-learner's permit.

(8) A qualified licensee as determined by the department who is twenty-one years of age or older and less than sixty-five years of age and who has a digital image and digital signature preserved in the digital system may renew his or her Class O or Class M license once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature without taking any examination required under section 60-4,114 if such renewal is prior to or within one year after the expiration of the license and if his or her driving record abstract maintained in the records of the department shows that such person's license is not suspended, revoked, or canceled. Every licensee must apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

(9) Any person who is twenty-one years of age or older and who has been issued a state identification card with a digital image and digital signature may electronically renew his or her state identification card once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature. Every holder of a state identification card shall apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

Source: Laws 1967, c. 234, § 6, p. 625; Laws 1984, LB 694, § 1; Laws 1989, LB 284, § 8; R.S.1943, (1988), § 60-411.01; Laws 1989, LB 285, § 72; Laws 1990, LB 742, § 4; Laws 1990, LB 369, § 16; Laws 1990, LB 980, § 10; Laws 1993, LB 370, § 87; Laws 1998, LB 320, § 9; Laws 1999, LB 704, § 23; Laws 2001, LB 387, § 7; Laws 2001, LB 574, § 16; Laws 2008, LB911, § 16.

60-4,123 LPD-learner's permit; application; issuance; operation restrictions.

(1) Any person who is at least fifteen years of age may apply for an LPD-learner's permit from the department. In order to obtain an LPD-learner's permit, the applicant shall successfully complete a written examination. A person may take the written examination beginning sixty days prior to his or her fifteenth birthday but shall not be issued a permit until he or she is fifteen years of age. The written examination may be waived for any person who has been issued an LPE-learner's permit, LPD-learner's permit, or SCP-school permit that has been expired for no more than one year.

(2) Upon successful completion of the written examination and the payment of a fee and surcharge as prescribed in section 60-4,115, the applicant shall be issued an LPD-learner's permit as provided in section 60-4,113. The permit shall be valid for twelve months.

(3)(a) The holder of an LPD-learner's permit shall only operate a motor vehicle on the highways of this state if he or she is accompanied at all times by a licensed operator who is at least twenty-one years of age and who has been licensed by this state or another state and if he or she is actually occupying the seat beside the licensed operator or, in the case of a motorcycle or moped, if he or she is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(b) The holder of an LPD-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the high-

ways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPD-learner's permit has been cited or charged with a violation of some other law.

(4) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each LPD-learner's permit.

Source: Laws 1989, LB 285, § 73; Laws 1991, LB 44, § 3; Laws 1998, LB 320, § 10; Laws 1999, LB 704, § 24; Laws 2001, LB 574, § 17; Laws 2005, LB 675, § 3; Laws 2007, LB415, § 5; Laws 2008, LB911, § 17.

60-4,124 School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty.

(1) A person who is younger than sixteen years and three months of age but is older than fourteen years and two months of age may be issued a school permit if such person lives a distance of one and one-half miles or more from the school he or she attends and either resides outside a city of the metropolitan, primary, or first class or attends a school which is outside a city of the metropolitan, primary, or first class and if such person has held an LPE-learner's permit for two months. A school permit shall not be issued until such person has demonstrated that he or she is capable of successfully operating a motor vehicle, moped, or motorcycle and has in his or her possession an issuance certificate authorizing the county treasurer to issue a school permit. In order to obtain an issuance certificate, the applicant shall present (a) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (i) the effects of the consumption of alcohol on a person operating a motor vehicle, (ii) occupant protection systems, (iii) risk assessment, and (iv) railroad crossing safety and (b)(i) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (ii) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. The department may waive the written examination if the applicant has been issued an LPE-learner's permit or LPD-learner's permit and if such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPE-learner's permit.

(2) A person holding a school permit may operate a motor vehicle, moped, or motorcycle:

(a) To and from where he or she attends school and between schools of enrollment over the most direct and accessible route by the nearest highway from his or her place of residence to transport such person or any family member who resides with such person to attend duly scheduled courses of instruction and extracurricular or school-related activities at the school he or she attends; or

(b) Under the personal supervision of a licensed operator. Such licensed operator shall be at least twenty-one years of age and licensed by this state or

another state and shall actually occupy the seat beside the permitholder or, in the case of a motorcycle or moped, if the permitholder is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(3) The holder of a school permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subsection shall be accomplished only as a secondary action when the holder of the school permit has been cited or charged with a violation of some other law.

(4) A person who is younger than sixteen years of age but is over fourteen years of age may be issued an LPE-learner's permit, which permit shall be valid for a period of three months. An LPE-learner's permit shall not be issued until such person successfully completes a written examination prescribed by the department and demonstrates that he or she has sufficient powers of eyesight to safely operate a motor vehicle, moped, or motorcycle.

(5)(a) While holding the LPE-learner's permit, the person may operate a motor vehicle on the highways of this state if he or she has seated next to him or her a person who is a licensed operator or, in the case of a motorcycle or moped, if he or she is within visual contact of and is under the supervision of a person who, in the case of a motorcycle, is a licensed motorcycle operator or, in the case of a moped, is a licensed motor vehicle operator. Such licensed motor vehicle or motorcycle operator shall be at least twenty-one years of age and licensed by this state or another state.

(b) The holder of an LPE-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPE-learner's permit has been cited or charged with a violation of some other law.

(6) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 from each successful applicant for a school or LPE-learner's permit. All school permits shall be subject to impoundment or revocation under the terms of section 60-496. Any person who violates the terms of a school permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

Source: Laws 1989, LB 285, § 74; Laws 1998, LB 320, § 11; Laws 2001, LB 387, § 8; Laws 2001, LB 574, § 18; Laws 2005, LB 675, § 4; Laws 2006, LB 853, § 9; Laws 2007, LB415, § 6; Laws 2008, LB911, § 18.

60-4,126 Farm permit; issuance; violations; penalty.

Any person who is younger than sixteen years of age but is over thirteen years of age and resides upon a farm in this state or is fourteen years of age or older and is employed for compensation upon a farm in this state may obtain a farm permit authorizing the operation of farm tractors, minitrucks, and other motorized implements of farm husbandry upon the highways of this state if the applicant for such farm permit furnishes satisfactory proof of age and satisfactorily demonstrates that he or she has knowledge of the operation of such equipment and of the rules of the road and laws respecting the operation of

motor vehicles upon the highways of this state. Any person under sixteen years of age but not less than thirteen years of age may obtain a temporary permit to operate such equipment for a six-month period after presentation to the department of a request for the temporary permit signed by the person's parent or guardian and payment of the fee and surcharge prescribed in section 60-4,115. After the expiration of the six-month period, it shall be unlawful for such person to operate such equipment upon the highways of this state unless he or she has been issued a farm permit under this section. The fee for an original, renewal, or duplicate farm permit shall be the fee and surcharge prescribed in section 60-4,115. All farm permits shall be subject to revocation under the terms of section 60-496. Any person who violates the terms of a farm permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

Source: Laws 1989, LB 285, § 76; Laws 1993, LB 491, § 13; Laws 1998, LB 320, § 13; Laws 2001, LB 574, § 19; Laws 2008, LB911, § 19; Laws 2010, LB650, § 31.
Operative date January 1, 2011.

60-4,127 Motorcycle operation; Class M license required; issuance; examination.

(1) No person shall operate a motorcycle on the alleys or highways of the State of Nebraska until such person has obtained a Class M license. No such license shall be issued until the applicant has (a) met the vision and physical requirements established under section 60-4,118 for operation of a motor vehicle and (b) successfully completed an examination, including the actual operation of a motorcycle, prescribed by the director, except that the required examination may be waived, including the actual operation of a motorcycle, if the applicant presents proof of successful completion of a motorcycle safety course under the Motorcycle Safety Education Act within the immediately preceding forty-eight months.

(2)(a) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. Any applicant who qualifies for a Class M license shall be issued a license for such operation by the county treasurer as provided for the issuance of an operator's license. If the applicant is the holder of an operator's license, the county treasurer shall, upon receipt of the examiner's certificate, have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

(b) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Upon presentation of an issuance certificate, the county treasurer shall collect the fee and surcharge for a Class M license as prescribed by section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The license shall be delivered as provided in section 60-4,113. If the applicant is the holder of an operator's license, the county treasurer shall, upon receipt of the examiner's certificate, have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

Source: Laws 1967, c. 234, § 8, p. 626; Laws 1971, LB 962, § 1; Laws 1974, LB 821, § 13; Laws 1974, LB 328, § 2; Laws 1977, LB 90,

§ 2; Laws 1981, LB 22, § 15; Laws 1986, LB 1004, § 1; R.S. 1943, (1988), § 60-403.01; Laws 1989, LB 285, § 77; Laws 1990, LB 369, § 17; Laws 1993, LB 201, § 3; Laws 1993, LB 370, § 88; Laws 1999, LB 704, § 25; Laws 2001, LB 574, § 20; Laws 2008, LB911, § 20.

Cross References

Motorcycle Safety Education Act, see section 60-2120.

60-4,129 Employment driving permit; issuance; conditions; violations; penalty; revocation.

(1) Any individual whose operator's license is revoked under section 60-498.02, 60-4,183, or 60-4,186 or suspended under section 43-3318 shall be eligible to operate any motor vehicle, except a commercial motor vehicle, in this state under an employment driving permit. An employment driving permit issued due to a revocation under section 60-498.02, 60-4,183, or 60-4,186 is valid for the period of revocation. An employment driving permit issued due to a suspension of an operator's license under section 43-3318 is valid for no more than three months and cannot be renewed. An employment driving permit shall not be issued to any person subject to an administrative license revocation 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 if 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.

(2) Any person whose operator's license has been suspended or revoked pursuant to any law of this state, except section 43-3318, 60-498.02, 60-4,183, or 60-4,186, shall not be eligible to receive an employment driving permit during the period of such suspension or revocation.

(3) An individual who is issued an employment driving permit may operate any motor vehicle, except a commercial motor vehicle, (a) from his or her residence to his or her place of employment and return and (b) during the normal course of employment if the use of a motor vehicle is necessary in the course of such employment. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this section shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) The operation of a motor vehicle by the holder of an employment driving permit, except as provided in this section, shall be unlawful. Any person who violates this section shall be guilty of a Class IV misdemeanor.

(5) The director shall revoke the employment driving permit for an individual upon receipt of an abstract of conviction, other than a conviction which is based upon actions which resulted in the application for such employment driving permit, indicating that the individual committed an offense for which points are assessed pursuant to section 60-4,182. If the permit is revoked in this manner, the individual shall not be eligible to receive an employment driving permit for the remainder of the period of suspension or revocation of his or her operator's license.

Source: Laws 1975, LB 259, § 5; Laws 1977, LB 41, § 15; Laws 1982, LB 568, § 8; Laws 1986, LB 779, § 1; R.S.1943, (1988), § 39-669.34; Laws 1989, LB 285, § 79; Laws 1992, LB 291, § 16; Laws 1993,

LB 370, § 89; Laws 1997, LB 752, § 140; Laws 2003, LB 209, § 10; Laws 2010, LB805, § 6.
Effective date July 15, 2010.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

60-4,131 Sections; applicability; terms, defined.

(1) Sections 60-462.01 and 60-4,132 to 60-4,172 shall apply to the operation of any commercial motor vehicle.

(2) For purposes of such sections:

(a) Disqualification means either:

(i) The suspension, revocation, cancellation, or any other withdrawal by a state of a person's privilege to drive a commercial motor vehicle; or

(ii) A determination by the Federal Motor Carrier Safety Administration, under the rules of practice for motor carrier safety contained in 49 C.F.R. 386, that a person is no longer qualified to operate a commercial motor vehicle under 49 C.F.R. 391; or

(iii) The loss of qualification which automatically follows conviction of an offense listed in 49 C.F.R. 383.51;

(b) Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; and leased drivers and independent, owner-operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer;

(c) Employer means any person, including the United States, a state, the District of Columbia, or a political subdivision of a state, that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle;

(d) Endorsement means an authorization to an individual's commercial driver's license required to permit the individual to operate certain types of commercial motor vehicles;

(e) Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate;

(f) State means a state of the United States and the District of Columbia;

(g) State of domicile means that state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has the intention of returning whenever he or she is absent;

(h) Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicle includes, but is not limited to, a cargo tank and a portable tank, as defined in 49 C.F.R. 171. However, this definition does not include a portable tank that has a rated capacity under one thousand gallons;

(i) United States means the fifty states and the District of Columbia; and

(j) Vehicle group means a class or type of vehicle with certain operating characteristics.

Source: Laws 1989, LB 285, § 81; Laws 1990, LB 980, § 11; Laws 1993, LB 420, § 5; Laws 1996, LB 323, § 2; Laws 2003, LB 562, § 7; Laws 2005, LB 76, § 7.

60-4,131.01 Individuals operating commercial motor vehicles for military purposes; applicability of sections.

Sections 60-462.01 and 60-4,132 to 60-4,172 shall not apply to individuals who operate commercial motor vehicles for military purposes, including and limited to:

(1) Active duty military personnel;

(2) Members of the military reserves, other than military technicians;

(3) Active duty United States Coast Guard personnel; and

(4) Members of the National Guard on active duty, including:

(a) Personnel on full-time National Guard duty;

(b) Personnel on part-time National Guard training; and

(c) National Guard military technicians required to wear military uniforms.

Such individuals must have a valid military driver's license unless such individual is operating the vehicle under written orders from a commanding officer in an emergency declared by the federal government or by the State of Nebraska.

Source: Laws 2006, LB 853, § 13.

60-4,132 Purposes of sections.

The purposes of sections 60-462.01 and 60-4,137 to 60-4,172 are to implement the requirements mandated by the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and federal regulations and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by: (1) Permitting drivers to hold only one operator's license; (2) disqualifying drivers for specified offenses and serious traffic violations; and (3) strengthening licensing and testing standards.

Source: Laws 1989, LB 285, § 82; Laws 1993, LB 7, § 2; Laws 1993, LB 420, § 6; Laws 2002, LB 499, § 1; Laws 2003, LB 562, § 8; Laws 2005, LB 76, § 8.

60-4,137 Operation of commercial motor vehicle; commercial driver's license or LPC-learner's permit required.

Any resident of this state operating a commercial motor vehicle on the highways of this state shall possess a commercial driver's license or LPC-learner's permit issued pursuant to sections 60-462.01 and 60-4,138 to 60-4,172.

Source: Laws 1989, LB 285, § 87; Laws 1993, LB 7, § 3; Laws 1993, LB 420, § 7; Laws 2001, LB 108, § 1; Laws 2003, LB 562, § 9; Laws 2005, LB 76, § 9.

60-4,138 Commercial drivers' licenses and restricted commercial drivers' licenses; classification.

(1) Commercial drivers' licenses and restricted commercial drivers' licenses shall be issued by the Department of Motor Vehicles, shall be classified as provided in subsection (2) of this section, and shall bear such endorsements and restrictions as are provided in subsections (3) and (4) of this section.

(2) Commercial motor vehicle classifications for purposes of commercial drivers' licenses shall be as follows:

(a) Class A Combination Vehicle — Any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds;

(b) Class B Heavy Straight Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds; and

(c) Class C Small Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds comprising:

(i) Motor vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to section 75-364.

(3) The endorsements to a commercial driver's license shall be as follows:

(a) T — Double/triple trailers;

(b) P — Passenger;

(c) N — Tank vehicle;

(d) H — Hazardous materials;

(e) X — Combination tank vehicle and hazardous materials; and

(f) S — School bus.

(4) The restrictions to a commercial driver's license shall be as follows:

(a) I — Operation of a commercial motor vehicle only in intrastate commerce due to an exemption from 49 C.F.R. part 391 pursuant to subsection (4) of section 75-363;

(b) K — Operation of a commercial motor vehicle only in intrastate commerce;

(c) L — Operation of only a commercial motor vehicle which is not equipped with air brakes;

(d) M — Operation of a commercial motor vehicle which is not a Class A bus;

(e) N — Operation of a commercial motor vehicle which is not a Class A or Class B bus; and

(f) O — Operation of a commercial motor vehicle which is not a tractor-trailer combination.

Source: Laws 1989, LB 285, § 88; Laws 1990, LB 980, § 14; Laws 1993, LB 420, § 8; Laws 1996, LB 938, § 1; Laws 2003, LB 562, § 10; Laws 2006, LB 1007, § 6.

60-4,139 Commercial motor vehicle; nonresident; operating privilege.

Any nonresident may operate a commercial motor vehicle upon the highways of this state if (1) such nonresident has in his or her immediate possession a valid commercial driver's license or LPC-learner's permit issued by his or her state of residence or by a jurisdiction with standards that are in accord with 49 C.F.R. part 383 or an LPC-learner's permit issued by this state, (2) the license or permit is not suspended, revoked, or canceled, and (3) such nonresident is not disqualified from operating a commercial motor vehicle.

Source: Laws 1989, LB 285, § 89; Laws 2001, LB 108, § 2; Laws 2006, LB 853, § 10.

60-4,141 Operation outside classification of license; restrictions; violation; penalty.

(1) Except as provided in subsections (2) and (3) of this section, no person shall operate any class of commercial motor vehicle upon the highways of this state unless such person possesses a valid commercial driver's license authorizing the operation of the class of commercial motor vehicle being operated, except that (a) any person possessing a valid commercial driver's license authorizing the operation of a Class A commercial motor vehicle may lawfully operate any Class B or C commercial motor vehicle and (b) any person possessing a valid commercial driver's license authorizing the operation of a Class B commercial motor vehicle may lawfully operate a Class C commercial motor vehicle. No person shall operate upon the highways of this state any commercial motor vehicle which requires a specific endorsement unless such person possesses a valid commercial driver's license with such endorsement. No person possessing a restricted commercial driver's license shall operate upon the highways of this state any commercial motor vehicle to which such restriction is applicable.

(2) Any person holding an LPC-learner's permit may operate a commercial motor vehicle for learning purposes upon the highways of this state if accompanied by a person who is twenty-one years of age or older, who holds a commercial driver's license valid for the class of commercial motor vehicle being operated, and who occupies the seat beside the person for the purpose of giving instruction in the operation of the commercial motor vehicle. Any person holding an LPC-learner's permit may operate a commercial motor vehicle upon the highways of this state for purposes of taking a driving skills examination if accompanied by an examiner who is designated by the director under section 60-4,149 or employed by a third-party tester certified pursuant to section 60-4,158 and who occupies the seat beside the person for the purpose of giving the examination. A person holding an LPC-learner's permit shall not operate a commercial motor vehicle transporting hazardous materials.

(3) The provisions of subsection (1) of this section shall not apply to any nonresident until the state of residence of such nonresident begins the issuance of commercial drivers' licenses in conformance with the requirements of the

Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., and the Motor Carrier Safety Improvement Act of 1999, 49 U.S.C. 31301 et seq., and section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and such nonresident is required by his or her state of residence to possess a commercial driver's license to operate a commercial motor vehicle. Any nonresident who is in this state for a period of thirty consecutive days or more shall apply for a Nebraska-issued commercial driver's license and shall surrender to the Department of Motor Vehicles any operator's license issued to such nonresident by any other state.

(4) Any person who operates a commercial motor vehicle upon the highways of this state in violation of this section shall, upon conviction, be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 285, § 91; Laws 1990, LB 980, § 15; Laws 1993, LB 7, § 4; Laws 1999, LB 704, § 28; Laws 2005, LB 76, § 10.

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.

60-4,142 LPC-learner's permit; issuance.

Any resident may obtain, on a form to be prescribed by the director, an LPC-learner's permit from the county treasurer by making application to an examiner of the Department of Motor Vehicles. An applicant shall present proof to the examiner that he or she holds a valid Class O license or commercial driver's license or shall successfully complete the requirements for the Class O license before an LPC-learner's permit is issued. An applicant shall also successfully complete the commercial driver's license general knowledge examination under section 60-4,155. Upon application, the examination may be waived if the applicant presents a Nebraska commercial driver's license which is valid or has been expired for less than one year, presents a valid commercial driver's license from another state, or is renewing an LPC-learner's permit. The LPC-learner's permit shall be valid for a period of six months and shall be renewed only once within any two-year period. The county treasurer shall charge the fee prescribed in section 60-4,115 for the issuance or renewal of an LPC-learner's permit.

Source: Laws 1989, LB 285, § 92; Laws 1990, LB 980, § 17; Laws 1998, LB 320, § 17; Laws 2001, LB 108, § 3; Laws 2001, LB 574, § 23; Laws 2003, LB 562, § 13; Laws 2006, LB 853, § 11.

60-4,143 Commercial driver's license; LPC-learner's permit; issuance; restriction; surrender of other licenses.

(1) No commercial driver's license or LPC-learner's permit shall, under any circumstances, be issued to any person who has not attained the age of eighteen years.

(2) A commercial driver's license or LPC-learner's permit shall not be issued to any person during the period the person is subject to a disqualification in this or any other state or while the person's operator's license is suspended, revoked, or canceled in this or any other state.

(3) The Department of Motor Vehicles shall not issue any commercial driver's license to any person unless the person applying for a commercial driver's license first surrenders to the department all operators' licenses issued to such person by this or any other state. Any operator's license issued by another state which is surrendered to the department shall be returned to that state by the director for cancellation.

Source: Laws 1989, LB 285, § 93; Laws 2005, LB 76, § 11.

60-4,144 Commercial drivers' licenses; applications; examiner's certificate; contents; application; demonstration of knowledge and skills; information and documentation required.

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. Application for any original or renewal commercial driver's license or application for any change of class of commercial motor vehicle, endorsement, or restriction may be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner's certificate containing the statements made pursuant to subdivision (b) of this subsection.

(b) The application or examiner's certificate shall include the voter registration portion pursuant to section 32-308, the advisement language required by subsection (5) of section 60-6,197, and the following:

(i) The full name, the current mailing address, and the residential address of the applicant, except that if the applicant is a program participant under the Address Confidentiality Act, he or she need not supply his or her residential address;

(ii) A physical description of the applicant, including sex, height, weight, and eye and hair colors;

(iii) The applicant's date of birth;

(iv) The applicant's social security number;

(v) The applicant's signature;

(vi) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate;

(vii) The certification required pursuant to section 60-4,145 or 60-4,146;

(viii) Beginning September 30, 2005, the names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application;

(ix) The following specific questions:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness . . . yes . . . no

(II) experienced vertigo or multiple episodes of dizziness or fainting . . . yes . . . no

(III) experienced disorientation . . . yes . . . no

(IV) experienced seizures . . . yes . . . no

(V) experienced impairment of memory, memory loss . . . yes . . . no

Please explain: . . . . . .

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of or impairment of foot, leg, hand, or arm; neurological or neuromuscular disease, etc.) . . . yes . . . no

Please explain: . . . . . .

(C) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? . . . yes . . . no

Please explain, including how the above affects your ability to drive: . . . . . ;

(x) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(xi) Do you wish to be an organ and tissue donor?

(xii) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(xiii) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(c) Application shall be made under oath or affirmation of the applicant.

(2) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. An applicant for any original or renewal commercial driver's license or an applicant for a change of class of commercial motor vehicle, endorsement, or restriction shall demonstrate his or her knowledge and skills for operating a commercial motor vehicle as prescribed in the Motor Vehicle Operator's License Act. An applicant for a commercial driver's license shall provide the information and documentation required by this section and section 60-484. Such information and documentation shall include:

(a) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate;

(b) The certification required pursuant to section 60-4,145 or 60-4,146; and

(c) The names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application.

Source: Laws 1989, LB 285, § 94; Laws 1992, LB 1178, § 4; Laws 1994, LB 76, § 575; Laws 1997, LB 635, § 21; Laws 1999, LB 147, § 3; Laws 1999, LB 704, § 29; Laws 2000, LB 1317, § 8; Laws 2001, LB 34, § 5; Laws 2003, LB 228, § 13; Laws 2003, LB 562, § 14; Laws 2004, LB 208, § 7; Laws 2004, LB 559, § 4; Laws 2005, LB 76, § 12; Laws 2008, LB911, § 21.

Cross References

Address Confidentiality Act, see section 42-1201.

60-4,145 Application; operation in interstate or foreign commerce; certification required.

Upon making any application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and who is subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that the applicant meets the qualification requirements of 49 C.F.R. part 391. A commercial driver's license examiner may require any applicant making certification pursuant to this section to demonstrate with or without the aid of corrective devices sufficient powers of eyesight to enable him or her to operate a commercial motor vehicle in conformance with the minimum vision requirements of 49 C.F.R. part 391 adopted pursuant to section 75-363. If from the examination given it appears that any applicant's powers of eyesight are such that he or she cannot meet the minimum vision requirements, the examiner shall allow the applicant to present an ophthalmologist's or optometrist's certificate to the effect that the applicant has sufficient powers of eyesight for such purpose before issuing a commercial driver's license to the applicant. If the examination given by the commercial driver's

license examiner or the ophthalmologist's or optometrist's certificate indicates that the applicant must wear a corrective device to meet the minimum vision requirements established by this section, the applicant shall have the use of the commercial driver's license issued to him or her restricted to wearing a corrective device while operating a motor vehicle. An applicant who has been issued a waiver or exemption by the Federal Motor Carrier Safety Administration from the vision requirements set forth in 49 C.F.R. 391.41(b)(10) may be issued an interstate commercial driver's license without meeting the vision requirements set forth in 49 C.F.R. 391.41(b)(10).

Source: Laws 1989, LB 285, § 95; Laws 1990, LB 980, § 18; Laws 1999, LB 704, § 30; Laws 2006, LB 1007, § 7.

60-4,146 Application; operation in intrastate commerce; certification; restrictions.

(1) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is not subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this section shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(2) An applicant who certifies that he or she is exempt from the physical qualifications and examination requirements of 49 C.F.R. part 391 pursuant to subsection (4) of section 75-363 shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board. A successful applicant shall be issued a commercial driver's license which restricts the holder to operating a commercial motor vehicle solely in intrastate commerce and which also indicates that the holder is exempt from the physical qualifications and examination requirements prescribed by 49 C.F.R. part 391. Two years after the initial issuance of such license and upon renewal, and every two years following renewal, the holder of the commercial driver's license shall present to the Department of Motor Vehicles upon request, on a form to be prescribed by the department, a statement from a physician detailing that based upon his or her examination of the applicant the medical or physical condition in existence prior to July 30, 1996, which would otherwise render the individual not qualified under federal standards, has not significantly worsened or that another nonqualifying medical or physical condition has not developed.

(3) An applicant who certifies that he or she is not subject to 49 C.F.R. part 391 under subsection (1) of this section or who certifies that he or she is exempt from 49 C.F.R. part 391 under subsection (2) of this section shall answer the following questions on the application:

(a) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(i) lost voluntary control or consciousness . . . yes . . . no

(ii) experienced vertigo or multiple episodes of dizziness or fainting . . . yes . . . no

(iii) experienced disorientation . . . yes . . . no

(iv) experienced seizures . . . yes . . . no

(v) experienced impairment of memory, memory loss . . . yes . . . no

Please explain: . . . . . .

(b) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) . . . yes . . . no

Please explain: . . . . . .

(c) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? . . . yes . . . no

Please explain, including how the above affects your ability to drive: . . . . . .

Source: Laws 1989, LB 285, § 96; Laws 1990, LB 980, § 19; Laws 1994, LB 211, § 11; Laws 1996, LB 938, § 2; Laws 1998, LB 320, § 18; Laws 1999, LB 704, § 31; Laws 2006, LB 1007, § 8.

60-4,147.01 Driver's record; disclosure of convictions; requirements.

The Department of Motor Vehicles, a prosecutor, or a court must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a commercial driver's license driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

Source: Laws 2005, LB 76, § 16.

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, 2010, for the issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

Source: Laws 2005, LB 76, § 17; Laws 2006, LB 853, § 12; Laws 2007, LB239, § 5; Laws 2008, LB756, § 17; Laws 2009, LB331, § 10; Laws 2010, LB805, § 7.
Effective date July 15, 2010.

60-4,147.03 Hazardous materials endorsement; application process.

Beginning on an implementation date designated by the director, an applicant for a new, renewal, or transferred hazardous materials endorsement shall complete an application process including threat assessment, background check, fingerprints, and payment of fees as prescribed by 49 C.F.R. 1522, 1570, and 1572. Upon receipt of a determination of threat assessment from the Transportation Security Administration of the United States Department of

Homeland Security or its agent, the department shall retain the application for not less than one year.

Source: Laws 2005, LB 76, § 18.

60-4,147.04 Hazardous materials endorsement; security threat assessment; department; powers.

Before a hazardous materials endorsement is issued, renewed, or transferred, the Department of Motor Vehicles must receive a determination of no security threat from the Transportation Security Administration of the United States Department of Homeland Security or its agent. The Department of Motor Vehicles shall cancel any existing commercial driver's license with a hazardous materials endorsement authorizing a driver to operate a vehicle transporting hazardous materials if it has received a determination that the holder of such endorsement does not meet the standards for security threat assessment as provided in 49 C.F.R. 1572 established by the Transportation Security Administration or its agent. The department may refuse to process an application for a new, renewal, or transferred commercial driver's license with a hazardous materials endorsement if:

(1) The applicant fails to submit to fingerprinting;

(2) The applicant fails to submit to required information and documentations;

(3) The applicant fails to pay the required fees;

(4) The applicant fails to pass any element of the hazardous materials portion of the commercial driver's license examination;

(5) The department receives a final determination of threat assessment from the Transportation Security Administration or its agent; or

(6) The department has not received from the Transportation Security Administration or its agent an advisement regarding the applicant's security threat status.

Source: Laws 2005, LB 76, § 19.

60-4,147.05 Hazardous materials endorsement; expiration; when.

(1) A commercial driver's license with a hazardous materials endorsement expires five years after the date of issuance of a determination of no security threat.

(2) When adding a hazardous materials endorsement to an existing Nebraska commercial driver's license before the expiration date of the existing license, the expiration date of the new commercial driver's license with the hazardous materials endorsement added shall be five years from the date of the determination of threat assessment. The license shall be issued upon payment of the appropriate prorated fee prescribed in section 60-4,115 for any additional time period added. If the date of the threat assessment plus five years is earlier than the expiration date of the commercial driver's license before the hazardous materials endorsement was added, the fee for a change of class, endorsement, or restriction shall apply.

(3) The Department of Motor Vehicles shall mail out a renewal notice for each such license at least sixty days before the expiration of the license. An applicant for renewal may initiate the renewal process after receiving such notice, but the renewal process shall be initiated at least thirty days before the

expiration date in order to allow time to process the security threat assessment. The department may extend the expiration date of the endorsement for ninety days if the Transportation Security Administration of the United States Department of Homeland Security or its agent has not provided a determination of threat assessment before the expiration date. Any additional extension must be approved in advance by the designee of the Transportation Security Administration.

Source: Laws 2005, LB 76, § 20.

60-4,147.06 Hazardous material endorsement; transfer from another state; procedure.

An applicant who transfers from another state shall surrender his or her commercial driver's license with a hazardous material endorsement before the issuance of a commercial driver's license by the State of Nebraska. The renewal period established in the preceding state shall be the expiration date for the Nebraska license if a determination of threat assessment has been completed by the other state prior to issuance of the license. The Department of Motor Vehicles shall issue prorated licenses with appropriate prorated fees prescribed in section 60-4,115 to applicants transferring from another state. Applicants transferring from another state who have completed the determination of threat assessment shall not be required to undergo a determination of threat assessment until the determination of threat assessment established in the preceding state expires.

Source: Laws 2005, LB 76, § 21.

60-4,148 Commercial drivers' licenses; issuance.

(1) All commercial drivers' licenses shall be issued by the department as provided in section 60-4,149. Successful applicants shall pay the fee and surcharge prescribed in section 60-4,115.

(2) Any person making application to add or remove a class of commercial motor vehicle, any endorsement, or any restriction to or from a previously issued and outstanding commercial driver's license shall pay the fee and surcharge prescribed in section 60-4,115. The fee for an original or renewal seasonal permit to revalidate the restricted commercial motor vehicle operating privilege to a previously issued and outstanding restricted commercial driver's license shall be the fee and surcharge prescribed in section 60-4,115.

Source: Laws 1989, LB 285, § 98; Laws 1990, LB 980, § 20; Laws 1991, LB 854, § 2; Laws 1993, LB 420, § 10; Laws 1997, LB 752, § 143; Laws 1998, LB 309, § 9; Laws 1999, LB 704, § 33; Laws 2001, LB 574, § 24; Laws 2008, LB911, § 22.

60-4,149 Commercial drivers' licenses; examination; issuance; delivery.

(1) The examination for commercial drivers' licenses by the department shall occur in and for each county of the State of Nebraska. Each county shall furnish office space for the administration of the examinations, except that two or more counties may, with the permission of the director, establish a separate facility to jointly conduct the examinations for such licenses.

(2) Except as provided for by section 60-4,157, all commercial driver's license examinations shall be conducted by department personnel designated by the

director. Each successful applicant shall be issued a certificate entitling the applicant to secure a commercial driver's license. If department personnel refuse to issue such certificate for cause, he or she shall state such cause in writing and deliver the same to the applicant. Department personnel shall not be required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(3)(a) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. The successful applicant shall, within thirty days, present his or her certificate to the county treasurer who shall immediately issue the commercial driver's license and collect the fee. The county treasurer shall report the issuance of commercial drivers' licenses and LPC-learners' permits to the department within five days after issuance.

(b) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. The successful applicant shall, within thirty days, present his or her issuance certificate to the county treasurer who shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The commercial driver's license shall be delivered to the applicant as provided in section 60-4,113.

Source: Laws 1989, LB 285, § 99; Laws 1990, LB 980, § 21; Laws 1999, LB 704, § 34; Laws 2008, LB911, § 23.

60-4,149.01 Commercial drivers' licenses; law examination; exceptions; waiver.

(1) A commercial driver's license examiner shall not require the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the applicant renews his or her commercial driver's license prior to its expiration or within one year after its expiration and if the applicant's driving record abstract maintained in the department's computerized records shows that his or her commercial driver's license is not suspended, revoked, canceled, or disqualified.

(2) A nonresident who holds a valid commercial driver's license from another state shall not be required to take the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the nonresident surrenders his or her valid out-of-state commercial driver's license to the commercial driver's license examiner.

(3) The commercial motor vehicle general knowledge examination shall be waived for the commercial driver's license applicant if the applicant holds a Nebraska-issued LPC-learner's permit that is valid or has been expired less than one year that is not canceled, suspended, revoked, or disqualified.

Source: Laws 1993, LB 420, § 9; Laws 1996, LB 938, § 3; Laws 1999, LB 704, § 35; Laws 2001, LB 387, § 9; Laws 2005, LB 76, § 13.

60-4,150 Commercial drivers' licenses; duplicate and replacement licenses; delivery.

(1) Any person holding a commercial driver's license who loses his or her license, who requires issuance of a replacement license because of a change of name or address, or whose license is mutilated or unreadable may obtain a duplicate or replacement commercial driver's license by filing an application and by furnishing proof of identification in accordance with section 60-484.

(2) The application for a replacement license because of a change of name or address shall be made within sixty days after the change of name or address.

(3)(a) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. Upon the examiner being satisfied that a duplicate or replacement commercial driver's license should be issued, the applicant shall receive such license upon payment of the fee prescribed in section 60-4,115 to the county treasurer.

(b) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. A duplicate or replacement commercial driver's license shall be delivered to the applicant as provided in section 60-4,113 after the county treasurer collects the fee and surcharge prescribed in section 60-4,115 and issues the applicant a receipt with driving privileges which is valid for up to thirty days.

(4) Duplicate and replacement commercial drivers' licenses shall be issued in the manner provided for the issuance of original and renewal commercial drivers' licenses as provided for by section 60-4,149. Upon issuance of any duplicate or replacement commercial driver's license, the commercial driver's license for which the duplicate or replacement license is issued shall be void.

Source: Laws 1989, LB 285, § 100; Laws 1990, LB 980, § 22; Laws 1993, LB 126, § 2; Laws 1998, LB 309, § 10; Laws 2001, LB 574, § 25; Laws 2005, LB 1, § 9; Laws 2008, LB911, § 24; Laws 2010, LB805, § 8.
Effective date July 15, 2010.

60-4,151 Commercial driver's license; restricted commercial driver's license; seasonal permit; form.

(1)(a) The commercial driver's license shall be conspicuously marked Nebraska Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof.

(b) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. The commercial driver's license shall include the following information:

(i) The name and residential address of the holder;

(ii) The holder's color photograph or digital image;

(iii) A physical description of the holder, including sex, height, weight, and eye and hair colors;

(iv) The holder's date of birth;

(v) The holder's signature;

(vi) The class of commercial motor vehicle or vehicles which the holder is authorized to operate, including any endorsements or restrictions;

(vii) The dates between which the commercial driver's license is valid; and

(viii) The organ and tissue donor information specified in section 60-494.

(c) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. The form of the commercial driver's license shall also comply with section 60-4,117.

(2) The restricted commercial driver's license shall be conspicuously marked Nebraska Restricted Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof. The restricted commercial driver's license shall contain such additional information as deemed necessary by the director.

(3) The seasonal permit shall contain such information as deemed necessary by the director but shall include the time period during which the commercial motor vehicle operating privilege is effective. The seasonal permit shall be valid only when held in conjunction with a restricted commercial driver's license.

Source: Laws 1989, LB 285, § 101; Laws 1992, LB 1178, § 5; Laws 1993, LB 420, § 11; Laws 2001, LB 34, § 6; Laws 2001, LB 574, § 26; Laws 2008, LB911, § 25.

60-4,152 Commercial driver's license issued to minor; form.

Any commercial driver's license issued by the Department of Motor Vehicles to a minor as defined in section 53-103.23, as such definition may be amended from time to time by the Legislature, shall be of a distinct designation, of a type prescribed by the director, from the commercial driver's license of a person who is not a minor.

Source: Laws 1989, LB 285, § 102; Laws 1993, LB 201, § 4; Laws 2010, LB861, § 81.
Effective date July 15, 2010.

60-4,159 Licensee; convictions; disqualifications; notification required; violation; penalty.

(1) Any person possessing a commercial driver's license issued by the Department of Motor Vehicles shall, within ten days of the date of conviction, notify the department of all convictions for violations of state law or local ordinance related to motor vehicle traffic control, except parking violations, when such convictions occur in another state.

(2) Any person possessing a commercial driver's license issued by the department who is convicted of violating any state law or local ordinance related to motor vehicle traffic control in this or any other state, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(3) Any person possessing a commercial driver's license issued by the department whose commercial driver's license is suspended, revoked, or canceled by any state, who loses the privilege to drive a commercial motor vehicle in any state for any period, or who is disqualified from driving a commercial motor vehicle for any period shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(4) Any person who fails to provide the notifications required in subsection (1), (2), or (3) of this section shall, upon conviction, be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 285, § 109; Laws 2005, LB 76, § 14.

60-4,163 Alcoholic liquor; prohibited operation; effect.

No person shall operate or be in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body. Any person who operates or is in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body or who refuses to submit to a test or tests to determine the alcoholic content of his or her blood or breath shall be placed out of service for twenty-four hours, shall be subject to disqualification as provided in sections 60-4,167 and 60-4,168, and shall be subject to prosecution for any violation of sections 60-6,196 and 60-6,197.

Any order to place a person out of service for twenty-four hours issued by a law enforcement officer shall be made pursuant to 49 C.F.R. 392.5(c) adopted pursuant to section 75-363.

Source: Laws 1989, LB 285, § 113; Laws 1993, LB 191, § 1; Laws 1993, LB 370, § 91; Laws 2001, LB 773, § 12; Laws 2006, LB 1007, § 9.

60-4,164.01 Alcoholic liquor; blood test; withdrawing requirements; damages; liability.

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 60-4,164. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-4,164 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

Source: Laws 1997, LB 210, § 4; Laws 2000, LB 819, § 75; Laws 2000, LB 1115, § 6; Laws 2007, LB296, § 231.

Cross References

Health Care Facility Licensure Act, see section 71-401.

60-4,168 Disqualification; when.

(1) Except as provided in subsections (2) and (3) of this section, a person shall be disqualified from driving a commercial motor vehicle for one year

upon his or her first conviction, after April 1, 1992, in this or any other state for:

(a) Driving a commercial motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance or, beginning September 30, 2005, driving any motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance;

(b) Driving a commercial motor vehicle in violation of section 60-4,163 or 60-4,164;

(c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person or, beginning September 30, 2005, leaving the scene of an accident involving any motor vehicle driven by the person;

(d) Using a commercial motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section or, beginning September 30, 2005, using any motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section;

(e) Beginning September 30, 2005, driving a commercial motor vehicle after his or her commercial driver's license has been suspended, revoked, or canceled or the driver is disqualified from driving a commercial motor vehicle; or

(f) Beginning September 30, 2005, causing a fatality through the negligent or criminal operation of a commercial motor vehicle.

(2) Except as provided in subsection (3) of this section, if any of the offenses described in subsection (1) of this section occurred while a person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from driving a commercial motor vehicle for three years.

(3) A person shall be disqualified from driving a commercial motor vehicle for life if, after April 1, 1992, he or she:

(a) Is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents; or

(b) Beginning September 30, 2005, used a commercial motor vehicle in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance.

(4)(a) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a commercial motor vehicle.

(b) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a motor vehicle other than a commercial motor vehicle if the convictions have resulted in the revocation, cancellation, or suspension of the person's operator's license or driving privileges.

(5)(a) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a highway-rail grade crossing shall be disqualified for the period of time specified in subdivision (5)(b) of this section:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b)(i) A person shall be disqualified for not less than sixty days if the person is convicted of a first violation described in this subsection.

(ii) A person shall be disqualified for not less than one hundred twenty days if, during any three-year period, the person is convicted of a second violation described in this subsection in separate incidents.

(iii) A person shall be disqualified for not less than one year if, during any three-year period, the person is convicted of a third or subsequent violation described in this subsection in separate incidents.

(6) For purposes of this section, controlled substance has the same meaning as in section 28-401.

(7) For purposes of this section, conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law, in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) For purposes of this section, serious traffic violation means:

(a) Speeding at or in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 60-6,214 or reckless driving as described in section 60-6,213;

(c) Improper lane change as described in section 60-6,139;

(d) Following the vehicle ahead too closely as described in section 60-6,140;

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person;

(f) Beginning September 30, 2005, driving a commercial motor vehicle without a commercial driver's license;

(g) Beginning September 30, 2005, driving a commercial motor vehicle without a commercial driver's license in the operator's possession; and

(h) Beginning September 30, 2005, driving a commercial motor vehicle without the proper class of commercial driver's license and any endorsements, if required, for the specific vehicle group being operated or for the passengers or type of cargo being transported on the vehicle.

Source: Laws 1989, LB 285, § 118; Laws 1990, LB 980, § 24; Laws 1993, LB 191, § 6; Laws 1993, LB 370, § 93; Laws 1996, LB 323, § 11; Laws 2001, LB 773, § 13; Laws 2002, LB 499, § 3; Laws 2003, LB 562, § 16; Laws 2005, LB 76, § 15.

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.

60-4,169 Revocation; when.

Whenever it comes to the attention of the director that any person when operating a motor vehicle has, based upon the records of the director, been convicted of or administratively determined to have committed an offense for

which disqualification is required pursuant to section 60-4,146.01, 60-4,168, or 60-4,168.01, the director shall summarily revoke (1) the commercial driver's license and privilege of such person to operate a commercial motor vehicle in this state or (2) the privilege, if such person is a nonresident, of operating a commercial motor vehicle in this state. Any revocation ordered by the director pursuant to this section shall commence on the date of the signing of the order of revocation or the date of the release of such person from the jail or a Department of Correctional Services adult correctional facility, whichever is later, unless the order of the court requires the jail time and the revocation to run concurrently.

Source: Laws 1989, LB 285, § 119; Laws 1993, LB 31, § 19; Laws 1993, LB 420, § 12; Laws 1996, LB 323, § 12; Laws 2001, LB 38, § 37; Laws 2010, LB805, § 9.
Effective date July 15, 2010.

(i) COMMERCIAL DRIVER TRAINING SCHOOLS

60-4,173 Terms, defined.

For purposes of sections 60-4,173 to 60-4,179:

(1) Driver training school or school means a business enterprise conducted by an individual, association, partnership, limited liability company, or corporation or a public or private educational facility which educates or trains persons to operate or drive motor vehicles or which furnishes educational materials to prepare an applicant for an examination by the state for an operator's license, provisional operator's permit, or LPD-learner's or LPE-learner's permit and which charges consideration or tuition for such service or materials; and

(2) Instructor means any person who operates a driver training school or who teaches, conducts classes, gives demonstrations, or supervises practical training of persons learning to operate or drive motor vehicles in connection with operation of a driver training school.

Source: Laws 1967, c. 380, § 1, p. 1191; R.S.1943, (1988), § 60-409.06; Laws 1989, LB 285, § 123; Laws 1993, LB 121, § 384; Laws 1998, LB 320, § 19; Laws 2008, LB279, § 1.

60-4,174 Director; duties; rules and regulations; Commissioner of Education; assist.

(1) The director shall adopt and promulgate such rules and regulations for the administration and enforcement of sections 60-4,173 to 60-4,179 as are necessary to protect the public. The director or his or her authorized representative shall examine applicants for Driver Training School and Instructor's Licenses, license successful applicants, and inspect school facilities and equipment. The director shall administer and enforce such sections and may call upon the Commissioner of Education for assistance in developing and formulating appropriate rules and regulations.

(2) Rules and regulations which have been adopted and promulgated pursuant to this section prior to July 18, 2008, shall remain in effect and be

applicable to all driver training schools and instructors until such time as new rules and regulations are adopted and promulgated.

Source: Laws 1967, c. 380, § 2, p. 1192; R.S.1943, (1988), § 60-409.07; Laws 1989, LB 285, § 124; Laws 2008, LB279, § 2.

60-4,175 School; license; requirements.

No driver training school shall be established nor any existing school be continued unless such school applies for and obtains from the director a license in the manner and form prescribed by the director. Rules and regulations adopted and promulgated by the director shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond, or other security in such sum and with such provisions as the director deems necessary to protect adequately the interests of the public, and such other matters as the director may prescribe.

Source: Laws 1967, c. 380, § 3, p. 1192; R.S.1943, (1988), § 60-409.08; Laws 1989, LB 285, § 125; Laws 2008, LB279, § 3.

(j) STATE IDENTIFICATION CARDS

60-4,181 State identification cards; issuance; requirements; form; delivery; cancellation.

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. A state identification card shall be issued by the county treasurer after the person requesting the card (i) files an application or examiner's certificate with an examining officer, (ii) furnishes two forms of proof of identification described in section 60-484, and (iii) pays the fee prescribed in section 60-4,115 to the county treasurer. The state identification card shall contain the organ and tissue donor information specified in section 60-494.

(b) The application or examiner's certificate shall include the name, age, post office address, place of residence unless the applicant is a program participant under the Address Confidentiality Act, date of birth, sex, social security number, and physical description of the applicant, the voter registration portion pursuant to section 32-308, and the following:

(i) Do you wish to register to vote as part of this application process?

(ii) Do you wish to be an organ and tissue donor?

(iii) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(iv) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(c) Each state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

(2) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Each applicant for a state

identification card shall provide the information and documentation required by section 60-484. The form of the state identification card shall comply with section 60-4,117. Upon presentation of an applicant's issuance certificate, the county treasurer shall collect the fee and surcharge as prescribed in section 60-4,115 and issue a receipt to the applicant which is valid up to thirty days. The state identification card shall be delivered to the applicant as provided in section 60-4,113.

(3) The director may summarily cancel any state identification card, and any judge or magistrate may order a state identification card canceled in a judgment of conviction, if the application or examiner's certificate for the card contains any false or fraudulent statements which were deliberately and knowingly made as to any matter material to the issuance of the card or if the application or examiner's certificate or issuance certificate does not contain required or correct information. Any state identification card so obtained shall be void from the date of issuance. Any judgment of conviction ordering cancellation of a state identification card shall be transmitted to the director who shall cancel the card.

Source: Laws 1989, LB 284, § 6; Laws 1989, LB 285, § 130; Laws 1992, LB 1178, § 6; Laws 1993, LB 491, § 15; Laws 1994, LB 76, § 576; Laws 1995, LB 467, § 14; Laws 1996, LB 1073, § 2; Laws 1997, LB 21, § 1; Laws 1997, LB 635, § 22; Laws 1998, LB 309, § 11; Laws 1999, LB 147, § 4; Laws 1999, LB 704, § 41; Laws 2000, LB 1317, § 9; Laws 2001, LB 34, § 7; Laws 2001, LB 574, § 29; Laws 2003, LB 228, § 14; Laws 2004, LB 559, § 5; Laws 2008, LB911, § 26.

Cross References

Address Confidentiality Act, see section 42-1201.

(k) POINT SYSTEM

60-4,182 Point system; offenses enumerated.

In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

(1) Conviction of motor vehicle homicide - 12 points;

(2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the records of the director, regardless of whether the trial court found the same to be a third offense - 12 points;

(3) Failure to stop and render aid as required under section 60-697 in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another - 6 points;

(4) Failure to stop and report as required under section 60-696 or any city or village ordinance in the event of a motor vehicle accident resulting in property damage - 6 points;

(5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 - 6 points;

(6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 - 6 points;

(7) Careless driving in violation of any city or village ordinance or of section 60-6,212 - 4 points;

(8) Negligent driving in violation of any city or village ordinance - 3 points;

(9) Reckless driving in violation of any city or village ordinance or of section 60-6,213 - 5 points;

(10) Speeding in violation of any city or village ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:

(a) Not more than five miles per hour over the speed limit - 1 point;

(b) More than five miles per hour but not more than ten miles per hour over the speed limit - 2 points;

(c) More than ten miles per hour but not more than thirty-five miles per hour over the speed limit - 3 points, except that one point shall be assessed upon conviction of exceeding by not more than ten miles per hour, two points shall be assessed upon conviction of exceeding by more than ten miles per hour but not more than fifteen miles per hour, and three points shall be assessed upon conviction of exceeding by more than fifteen miles per hour but not more than thirty-five miles per hour the speed limits provided for in subdivision (1)(e), (f), (g), or (h) of section 60-6,186; and

(d) More than thirty-five miles per hour over the speed limit - 4 points;

(11) Failure to yield to a pedestrian not resulting in bodily injury to a pedestrian - 2 points;

(12) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian - 4 points;

(13) Using a handheld wireless communication device in violation of section 60-6,179.01 - 3 points; and

(14) All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 60-497.01 and 60-497.02 - 1 point.

Subdivision (14) of this section does not include violations involving an occupant protection system pursuant to section 60-6,270, parking violations, violations for operating a motor vehicle without a valid operator's license in the operator's possession, muffler violations, overwidth, overheight, or overlength violations, motorcycle or moped protective helmet violations, or overloading of trucks.

All such points shall be assessed against the driving record of the operator as of the date of the violation for which conviction was had. Points may be reduced by the department under section 60-4,188.

In all cases, the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the operator was charged.

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle or an electric personal assistive mobility device as defined in section 60-618.02.

Source: Laws 1953, c. 219, § 1, p. 768; Laws 1955, c. 156, § 1, p. 457; Laws 1957, c. 168, § 1, p. 587; Laws 1957, c. 366, § 26, p. 1261; Laws 1959, c. 174, § 1, p. 625; Laws 1959, c. 169, § 2, p. 617;

Laws 1961, c. 185, § 3, p. 571; Laws 1967, c. 235, § 2, p. 630; R.R.S.1943, § 39-7,128; Laws 1974, LB 590, § 1; Laws 1974, LB 873, § 4; Laws 1975, LB 381, § 4; Laws 1975, LB 328, § 1; Laws 1976, LB 265, § 1; Laws 1983, LB 204, § 1; Laws 1985, LB 496, § 2; Laws 1987, LB 430, § 3; Laws 1987, LB 224, § 3; Laws 1988, LB 428, § 6; Laws 1992, LB 958, § 2; R.S.Supp.,1992, § 39-669.26; Laws 1993, LB 370, § 80; Laws 1993, LB 575, § 17; Laws 1996, LB 901, § 2; Laws 2001, LB 166, § 3; Laws 2001, LB 773, § 14; Laws 2002, LB 1105, § 446; Laws 2006, LB 925, § 3; Laws 2007, LB35, § 1; Laws 2008, LB621, § 1; Laws 2010, LB945, § 1.
Effective date July 15, 2010.

Cross References

Assessment of points when person is placed on probation, see section 60-497.01.

ARTICLE 5
MOTOR VEHICLE SAFETY RESPONSIBILITY

(a) DEFINITIONS

(b) ADMINISTRATION

(d) PROOF OF FINANCIAL RESPONSIBILITY

(a) DEFINITIONS

60-501 Terms, defined.

For purposes of the Motor Vehicle Safety Responsibility Act, unless the context otherwise requires:

(1) Department means Department of Motor Vehicles;

(2) Judgment means any judgment which shall have become final by the expiration of the time within which an appeal might have been perfected without being appealed, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, (a) upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or (b) upon a cause of action on an agreement of settlement for such damages;

(3) License means any license issued to any person under the laws of this state pertaining to operation of a motor vehicle within this state;

(4) Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (a) is powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters or less, (b) is sixty-seven inches or less in width, (c) has a dry weight of four thousand two hundred pounds or less, (d) travels on four or more tires, (e) has a top

speed of approximately fifty-five miles per hour, (f) is equipped with a bed or compartment for hauling, (g) has an enclosed passenger cab, (h) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (i) has a four-speed, five-speed, or automatic transmission;

(5) Motor vehicle means any self-propelled vehicle which is designed for use upon a highway, including trailers designed for use with such vehicles, and minitrucks. Motor vehicle does not include (a) mopeds as defined in section 60-637, (b) traction engines, (c) road rollers, (d) farm tractors, (e) tractor cranes, (f) power shovels, (g) well drillers, (h) every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, (i) electric personal assistive mobility devices as defined in section 60-618.02, and (j) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663;

(6) Nonresident means every person who is not a resident of this state;

(7) Nonresident's operating privilege means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him or her of a motor vehicle or the use of a motor vehicle owned by him or her in this state;

(8) Operator means every person who is in actual physical control of a motor vehicle;

(9) Owner means a person who holds the legal title of a motor vehicle, or in the event (a) a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or (b) a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of the act;

(10) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(11) Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (a) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (b) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (c) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident;

(12) Registration means registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(13) State means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada; and

(14) The forfeiture of bail, not vacated, or of collateral deposited to secure an appearance for trial shall be regarded as equivalent to conviction of the offense charged.

Source: Laws 1949, c. 178, § 1, p. 482; Laws 1957, c. 366, § 42, p. 1275; Laws 1959, c. 298, § 1, p. 1107; Laws 1959, c. 299, § 1, p. 1123; Laws 1971, LB 644, § 4; Laws 1972, LB 1196, § 4; Laws 1973, LB 365, § 1; Laws 1979, LB 23, § 14; Laws 1983, LB 253, § 1; Laws 1987, LB 80, § 11; Laws 1993, LB 121, § 385; Laws 1993, LB 370, § 94; Laws 2002, LB 1105, § 447; Laws 2010, LB650, § 32.
Operative date January 1, 2011.

(b) ADMINISTRATION

60-505.02 Reinstatement of license or registration; filing of proof of financial responsibility; payment of fees.

(1) Whenever a license is revoked and the filing of proof of financial responsibility is, by the Motor Vehicle Safety Responsibility Act, made a prerequisite to reinstatement of eligibility for a new license, no license shall be issued unless the licensee, in addition to complying with the other provisions of the act, pays to the Department of Motor Vehicles a reinstatement fee of one hundred twenty-five dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

(2) Whenever a license is suspended and the filing of proof of financial responsibility is, by the act, made a prerequisite to reinstatement of such license or to the issuance of a new license, no such license shall be reinstated or new license issued unless the licensee, in addition to complying with the other provisions of the act, pays to the department a fee of fifty dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(3) When a registration is suspended and the filing of proof of financial responsibility is, by the act, made a prerequisite to reinstatement of the registration, no such registration shall be reinstated or new registration issued unless the registrant, in addition to complying with the act and the Motor Vehicle Registration Act, pays to the department a fee of fifty dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1959, c. 298, § 4, p. 1110; Laws 1980, LB 672, § 1; Laws 1993, LB 491, § 16; Laws 2001, LB 38, § 40; Laws 2005, LB 274, § 236.

Cross References

Motor Vehicle Registration Act, see section 60-301.

(d) PROOF OF FINANCIAL RESPONSIBILITY

60-520 Judgments; payments sufficient to satisfy requirements.

Judgments in excess of the amounts specified in subdivision (11) of section 60-501 shall, for the purpose of the Motor Vehicle Safety Responsibility Act

only, be deemed satisfied when payments in the amounts so specified have been credited thereon. Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified.

Source: Laws 1949, c. 178, § 20, p. 492; Laws 2010, LB650, § 33. Operative date January 1, 2011.

60-547 Bond; proof of financial responsibility.

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties who each own real estate within this state, which real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for the payment of the amounts specified in subdivision (11) of section 60-501. It shall be filed with the department and shall not be cancelable except after ten days' written notice to the department. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the department in the office of the register of deeds of the county where such real estate shall be located.

Source: Laws 1949, c. 178, § 47, p. 498; Laws 2010, LB650, § 34. Operative date January 1, 2011.

ARTICLE 6

NEBRASKA RULES OF THE ROAD

(a) GENERAL PROVISIONS

(c) PENALTY AND ENFORCEMENT PROVISIONS

(d) ACCIDENTS AND ACCIDENT REPORTING

Section
60-6,324. Repealed. Laws 2005, LB 274, § 286.
60-6,325. Repealed. Laws 2005, LB 274, § 286.
60-6,326. Repealed. Laws 2005, LB 274, § 286.
60-6,327. Repealed. Laws 2005, LB 274, § 286.
60-6,328. Repealed. Laws 2005, LB 274, § 286.
60-6,329. Repealed. Laws 2005, LB 274, § 286.
60-6,330. Repealed. Laws 2005, LB 274, § 286.
60-6,331. Repealed. Laws 2005, LB 274, § 286.
60-6,332. Repealed. Laws 2005, LB 274, § 286.
60-6,333. Repealed. Laws 2005, LB 274, § 286.

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

60-6,347. Minibikes; exemptions from certain requirements.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

60-6,355. All-terrain vehicle, defined; utility-type vehicle, defined.
60-6,356. All-terrain vehicle; utility-type vehicle; operation; restrictions; city or village ordinance; county board resolution.
60-6,357. All-terrain vehicle; utility-type vehicle; lights required; when.
60-6,358. All-terrain vehicle; utility-type vehicle; equipment required.
60-6,359. Modification of all-terrain vehicle or utility-type vehicle; prohibited.
60-6,360. All-terrain vehicle; utility-type vehicle; competitive events; exemptions.
60-6,361. All-terrain vehicle; utility-type vehicle; accident; report required.

(gg) SMOKE EMISSIONS AND NOISE

60-6,364. Applicability of sections.

(hh) SPECIAL RULES FOR ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

60-6,375. Electric personal assistive mobility device; exemptions from certain requirements.

(ii) EMERGENCY VEHICLE OR ROAD ASSISTANCE VEHICLE

60-6,378. Stopped authorized emergency vehicle or road assistance vehicle; driver; duties; violation; penalty.

(jj) SPECIAL RULES FOR MINITRUCKS

60-6,379. Minitrucks; restrictions on use.

(a) GENERAL PROVISIONS

60-601 Rules, how cited.

Sections 60-601 to 60-6,379 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; Laws 2010, LB650, § 35; Laws 2010, LB945, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB650, section 35, with LB945, section 2, to reflect all amendments.

Note: Changes made by LB945 became effective July 15, 2010. Changes made by LB650 became operative January 1, 2011.

60-605 Definitions, where found.

For purposes of the Nebraska Rules of the Road, the definitions found in sections 60-606 to 60-676 shall be used.

Source: Laws 1993, LB 370, § 101; Laws 1996, LB 901, § 4; Laws 1997, LB 91, § 2; Laws 2001, LB 38, § 43; Laws 2006, LB 853, § 15; Laws 2006, LB 925, § 5; Laws 2008, LB756, § 19; Laws 2010, LB650, § 36.
Operative date January 1, 2011.

60-610 Authorized emergency vehicle, defined.

Authorized emergency vehicle shall mean such fire department vehicles, police vehicles, rescue vehicles, and ambulances as are publicly owned, such other publicly or privately owned vehicles as are designated by the Director of Motor Vehicles, and such publicly owned military vehicles of the National Guard as are designated by the Adjutant General pursuant to section 55-133.

Source: Laws 1993, LB 370, § 106; Laws 2008, LB196, § 2.

60-614.01 Continuous alcohol monitoring device, defined.

Continuous alcohol monitoring device means a portable device capable of automatically and periodically testing and recording alcohol consumption levels and automatically and periodically transmitting such information and tamper attempts regarding such device, regardless of the location of the person being monitored.

Source: Laws 2006, LB 925, § 6.

60-624.01 Idle reduction technology, defined.

Idle reduction technology means any device or system of devices that is installed on a heavy-duty diesel-powered on-highway truck or truck-tractor and is designed to provide to such truck or truck-tractor those services, such as heat, air conditioning, or electricity, that would otherwise require the operation of the main drive engine while the truck or truck-tractor is temporarily parked or remains stationary.

Source: Laws 2008, LB756, § 20.

60-636.01 Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB650, § 37.
Operative date January 1, 2011.

60-649.01 Property-carrying unit, defined.

Property-carrying unit shall mean any part of a commercial motor vehicle combination, except the truck-tractor, used to carry property and shall include trailers and semitrailers.

Source: Laws 2006, LB 853, § 16.

60-653 Registration, defined.

Registration shall mean the registration certificate or certificates and license plates issued under the Motor Vehicle Registration Act.

Source: Laws 1993, LB 370, § 149; Laws 2005, LB 274, § 237.

Cross References

Motor Vehicle Registration Act, see section 60-301.

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.

(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.

60-683 Peace officers; duty to enforce rules and laws; powers.

All peace officers are hereby specifically directed and authorized and it shall be deemed and considered a part of the official duties of each of such officers to enforce the provisions of the Nebraska Rules of the Road, including the specific enforcement of maximum speed limits, and any other law regulating the operation of vehicles or the use of the highways. To perform the official duties imposed by this section, the Superintendent of Law Enforcement and Public Safety and all officers of the Nebraska State Patrol shall have the powers stated in section 81-2005. All other peace officers shall have the power:

(1) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law;

(2) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of this state relating to misdemeanors or felonies, if and when designated or called upon to do so as provided by law;

(3) At all times to direct all traffic in conformity with law or, in the event of a fire or other emergency or in order to expedite traffic or insure safety, to direct traffic as conditions may require;

(4) When in uniform, to require the driver of a vehicle to stop and exhibit his or her operator's license and registration certificate issued for the vehicle and submit to an inspection of such vehicle and the license plates and registration certificate for the vehicle and to require the driver of a motor vehicle to present the vehicle within five days for correction of any defects revealed by such motor vehicle inspection as may lead the inspecting officer to reasonably believe that such motor vehicle is being operated in violation of the statutes of Nebraska or the rules and regulations of the Director of Motor Vehicles;

(5) To inspect any vehicle of a type required to be registered according to law in any public garage or repair shop or in any place where such a vehicle is held for sale or wrecking;

(6) To serve warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways; and

(7) To investigate traffic accidents for the purpose of carrying on a study of traffic accidents and enforcing motor vehicle and highway safety laws.

Source: Laws 1939, c. 78, § 1, p. 317; Laws 1941, c. 176, § 13, p. 693; C.S.Supp.,1941, § 39-11,119; R.S.1943, § 39-7,124; Laws 1989, LB 285, § 10; R.S.Supp.,1992, § 39-6,192; Laws 1993, LB 370, § 179; Laws 1996, LB 901, § 6; Laws 2005, LB 274, § 238.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

60-685 Misdemeanor or traffic infraction; lawful complaints.

When a person has been charged with any act declared to be a misdemeanor or traffic infraction by the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Motor Vehicle Safety Responsibility Act, or the Nebraska Rules of the Road, and is issued a citation meeting the requirements prescribed by the Supreme Court, if such citation includes the information and is sworn to as required by the laws of this state, then such citation when filed with a court having jurisdiction shall be deemed a lawful complaint for the purpose of prosecution.

Source: Laws 1973, LB 45, § 107; Laws 1974, LB 829, § 10; R.S.1943, (1988), § 39-6,107; Laws 1993, LB 370, § 181; Laws 2005, LB 274, § 239.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-696 Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty.

(1) Except as provided in subsection (2) of this section, the driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to property, shall (a) immediately stop such vehicle at the scene of such accident and (b) give his or her name, address, telephone number, and operator's license number to the owner of the property struck or the driver or occupants of any other vehicle involved in the collision.

(2) The driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to an unattended vehicle or property, shall immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing the information required by subsection (1) of this section. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.

(3)(a) A peace officer may remove or cause to be removed from a roadway, without the consent of the driver or owner, any vehicle, cargo, or other property which is obstructing the roadway creating or aggravating an emergency situation or otherwise endangering the public safety. Any vehicle, cargo, or other property obstructing a roadway shall be removed by the most expeditious means available to clear the obstruction, giving due regard to the protection of the property removed.

(b) This subsection does not apply if an accident results in or is believed to involve the release of hazardous materials, hazardous substances, or hazardous wastes, as those terms are defined in section 75-362.

(4) Any person violating subsection (1) or (2) of this section is guilty of a Class II misdemeanor. If such person has had one or more convictions under this section in the twelve years prior to the date of the current conviction under this

section, such person is guilty of a Class I misdemeanor. As part of any sentence, suspended sentence, or judgment of conviction under this section, the court may order the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of up to one year from the date ordered by the court. If the court orders the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of up to one year from the date ordered by the court, the court shall also order that the operator's license of such person be revoked for a like period.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(2), p. 409; Laws 1949, c. 119, § 2, p. 316; Laws 1949, c. 120, § 2, p. 317; Laws 1959, c. 169, § 1, p. 617; R.R.S.1943, § 39-762.01; Laws 1978, LB 748, § 26; R.S.1943, (1988), § 39-6,104.02; Laws 1993, LB 370, § 192; Laws 1994, LB 929, § 1; Laws 2001, LB 254, § 1; Laws 2006, LB 925, § 7; Laws 2007, LB561, § 1; Laws 2010, LB914, § 1.
Effective date July 15, 2010.

Cross References

Operator's license, assessment of points, see sections 60-497.01 and 60-4,182 et seq.

60-697 Accident; driver's duty; penalty.

The driver of any vehicle involved in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall (1) immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons involved, (2) give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the occupants of any vehicle collided with, and (3) render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person. Any person violating any of the provisions of this section shall upon conviction thereof be punished as provided in section 60-698.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(1), p. 409; Laws 1949, c. 119, § 1, p. 315; Laws 1949, c. 120, § 1, p. 317; R.R.S.1943, § 39-762; R.S.1943, (1988), § 39-6,104.01; Laws 1993, LB 370, § 193; Laws 2005, LB 274, § 240; Laws 2006, LB 925, § 8.

Cross References

Operator's license, assessment of points, revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

60-698 Accident; failure to stop; penalty.

Every person convicted of violating section 60-697 relative to the duty to stop in the event of certain accidents shall be guilty of a Class IIIA felony. The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than one year nor more than fifteen years from the date ordered by the court, and shall order that the operator's license of such person be revoked for a like period. The order of the

court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

Source: Laws 1931, c. 110, § 56, p. 324; C.S.Supp.,1941, § 39-1187; R.S.1943, § 39-763; Laws 1953, c. 214, § 2, p. 757; R.R.S.1943, § 39-763; Laws 1978, LB 748, § 27; R.S.1943, (1988), § 39-6,104.03; Laws 1993, LB 31, § 18; Laws 1993, LB 370, § 194; Laws 1997, LB 772, § 6; Laws 2006, LB 925, § 9.

60-6,100 Accidents; reports required of garages and repair shops.

The person in charge of any garage or repair shop to which is brought any vehicle which shows evidence of having been involved in a serious accident or struck by any bullet shall report to the nearest police station or sheriff's office within twenty-four hours after such vehicle is received, giving the engine number, if applicable, the license number, and the name and address of the owner or operator of such vehicle.

Source: Laws 1931, c. 110, § 30, p. 315; C.S.Supp.,1941, § 39-1161; R.S.1943, § 39-765; R.S.1943, (1988), § 39-6,104.05; Laws 1993, LB 370, § 196; Laws 2005, LB 274, § 241.

60-6,104 Accidents; body fluid; samples; test; report.

All samples and tests of body fluids under sections 60-6,101 to 60-6,103 shall be submitted to and performed by an individual possessing a valid permit issued by the Department of Health and Human Services for such purpose. Such tests shall be performed according to methods approved by the department. Such individual shall promptly perform such analysis and report the results thereof to the official submitting the sample.

Source: Laws 1974, LB 66, § 4; R.S.1943, (1988), § 39-6,104.09; Laws 1993, LB 370, § 200; Laws 1996, LB 1044, § 282; Laws 2007, LB296, § 232.

60-6,107 Accidents; Department of Health and Human Services; Department of Roads; adopt rules and regulations.

(1) Except as provided in subsection (2) of this section, the Department of Health and Human Services shall adopt necessary rules and regulations for the administration of the provisions of sections 60-6,101 to 60-6,106.

(2) The Department of Roads shall adopt and promulgate rules and regulations which shall provide for the release and disclosure of the results of tests conducted under sections 60-6,102 and 60-6,103.

Source: Laws 1974, LB 66, § 7; R.S.1943, (1988), § 39-6,104.12; Laws 1993, LB 370, § 203; Laws 1993, LB 590, § 5; Laws 1996, LB 1044, § 283; Laws 2007, LB296, § 233.

(e) APPLICABILITY OF TRAFFIC LAWS

60-6,114 Authorized emergency vehicles; privileges; conditions.

(1) Subject to the conditions stated in the Nebraska Rules of the Road, the driver of an authorized emergency vehicle, when responding to an emergency call, when pursuing an actual or suspected violator of the law, or when responding to but not when returning from a fire alarm, may:

(a) Stop, park, or stand, irrespective of the provisions of the rules, and disregard regulations governing direction of movement or turning in specified directions; and

(b) Except for wreckers towing disabled vehicles and highway maintenance vehicles and equipment:

(i) Proceed past a steady red indication, a flashing red indication, or a stop sign but only after slowing down as may be necessary for safe operation; and

(ii) Exceed the maximum speed limits so long as he or she does not endanger life, limb, or property.

(2) Except when operated as a police vehicle, the exemptions granted in subsection (1) of this section shall apply only when the driver of such vehicle, while in motion, sounds an audible signal by bell, siren, or exhaust whistle as may be reasonably necessary and when such vehicle is equipped with at least one lighted light displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle.

(3) The exemptions granted in subsection (1) of this section shall not relieve the driver from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect such driver from the consequences of his or her reckless disregard for the safety of others.

(4) Authorized emergency vehicles operated by police and fire departments shall not be subject to the size and weight limitations of sections 60-6,288 to 60-6,290 and 60-6,294.

Source: Laws 1973, LB 45, § 8; R.S.1943, (1988), § 39-608; Laws 1993, LB 370, § 210; Laws 2005, LB 82, § 2.

(f) TRAFFIC CONTROL DEVICES

60-6,123 Traffic control signals; meaning; turns on red signal; when; signal not in service; effect.

Whenever traffic is controlled by traffic control signals exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend, number, or symbol, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1)(a) Vehicular traffic facing a circular green indication may proceed straight through or turn right or left unless a sign at such place prohibits either such turn, but vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such indication is exhibited;

(b) Vehicular traffic facing a green arrow indication, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time, and such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and

(c) Unless otherwise directed by a pedestrian-control signal, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk;

(2)(a) Vehicular traffic facing a steady yellow indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection, and upon display of a steady yellow indication, vehicular traffic shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety, a vehicle may be driven cautiously through the intersection; and

(b) Pedestrians facing a steady yellow indication, unless otherwise directed by a pedestrian-control signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway;

(3)(a) Vehicular traffic facing a steady red indication alone shall stop at a clearly marked stop line or shall stop, if there is no such line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection. The traffic shall remain standing until an indication to proceed is shown except as provided in subdivisions (3)(b) and (3)(c) of this section;

(b) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication may cautiously enter the intersection to make a right turn after stopping as required by subdivision (3)(a) of this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection;

(c) Except where a traffic control device is in place prohibiting a turn, vehicular traffic facing a steady red indication at the intersection of two one-way streets may cautiously enter the intersection to make a left turn after stopping as required by subdivision (3)(a) of this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; and

(d) Unless otherwise directed by a pedestrian-control signal, pedestrians facing a steady red indication alone shall not enter the roadway;

(4) If a traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal; and

(5)(a) If a traffic control signal at an intersection is not operating because of a power failure or other cause and no peace officer, flagperson, or other traffic control device is providing direction for traffic at the intersection, the intersection shall be treated as a multi-way stop; and

(b) If a traffic control signal is not in service and the signal heads are turned away from traffic or covered with opaque material, subdivision (a) of this subdivision shall not apply.

Source: Laws 1973, LB 45, § 14; Laws 1980, LB 821, § 1; Laws 1987, LB 135, § 1; R.S.1943, (1988), § 39-614; Laws 1993, LB 370, § 219; Laws 2010, LB805, § 10.
Effective date July 15, 2010.

60-6,126.01 Road name signs; authorized.

Local authorities may place and maintain road name signs on the same sign posts as signs under the jurisdiction of the Department of Roads when highway visibility would not be impaired. Local authorities may also place and maintain road name signs in the right-of-way of any highway under the jurisdiction of the Department of Roads when highway visibility would not be impaired.

Source: Laws 2006, LB 853, § 17.

(g) USE OF ROADWAY AND PASSING

60-6,144 Restrictions on use of controlled-access highway.

Use of a freeway and entry thereon by the following shall be prohibited at all times except by permit from the Department of Roads or from the local authority in the case of freeways not under the jurisdiction of the department:

(1) Pedestrians except in areas specifically designated for that purpose;

(2) Hitchhikers or walkers;

(3) Vehicles not self-propelled;

(4) Bicycles, motor-driven cycles, motor scooters not having motors of more than ten horsepower, and electric personal assistive mobility devices;

(5) Animals led, driven on the hoof, ridden, or drawing a vehicle;

(6) Funeral processions;

(7) Parades or demonstrations;

(8) Vehicles, except emergency vehicles, unable to maintain minimum speed as provided in the Nebraska Rules of the Road;

(9) Construction equipment;

(10) Implements of husbandry, whether self-propelled or towed;

(11) Vehicles with improperly secured attachments or loads;

(12) Vehicles in tow, when the connection consists of a chain, rope, or cable, except disabled vehicles which shall be removed from such freeway at the nearest interchange;

(13) Vehicles with deflated pneumatic, metal, or solid tires or continuous metal treads except maintenance vehicles;

(14) Any person standing on or near a roadway for the purpose of soliciting or selling to an occupant of any vehicle; or

(15) Overdimensional vehicles.

Source: Laws 1973, LB 45, § 33; R.S.1943, (1988), § 39-633; Laws 1993, LB 370, § 240; Laws 1993, LB 575, § 8; Laws 2002, LB 1105, § 457; Laws 2006, LB 853, § 18.

(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.

(j) TURNING AND SIGNALS

60-6,162 Signals given by hand and arm or signal lights; signal lights required; exceptions.

(1) Any stop signal or turnsignal required by the Nebraska Rules of the Road shall be given either by means of the hand and arm or by signal lights except as otherwise provided in this section.

(2) With respect to any motor vehicle having four or more wheels manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, or any trailer, in use on a highway, any required signal shall be given by the appropriate signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle or trailer exceeds twenty-four inches. Such measurement shall apply to any single vehicle or trailer and to any combination of vehicles or trailers. This subsection shall not apply during daylight hours to fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations.

(3) Under any condition when a hand and arm signal would not be visible both to the front and rear of the vehicle of such signaling driver for one hundred feet, the required signals shall be given by such a light or device as required by this section.

Source: Laws 1973, LB 45, § 53; Laws 1987, LB 216, § 1; R.S.1943, (1988), § 39-653; Laws 1993, LB 370, § 258; Laws 1995, LB 59, § 1; Laws 2003, LB 238, § 5; Laws 2005, LB 274, § 242.

(k) STOPPING, STANDING, PARKING, AND BACKING UP

60-6,164 Stopping, parking, or standing upon a roadway, freeway, or bridge; limitations; duties of driver.

(1) No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon a roadway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle off such part

of a highway, but in any event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway. Such parking, stopping, or standing shall in no event exceed twenty-four hours.

(2) No person shall stop, park, or leave standing any vehicle on a freeway except in areas designated or unless so directed by a peace officer, except that when a vehicle is disabled or inoperable or the driver of the vehicle is ill or incapacitated, such vehicle shall be permitted to park, stop, or stand on the shoulder facing in the direction of travel with all wheels and projecting parts of such vehicle completely clear of the traveled lanes, but in no event shall such parking, standing, or stopping upon the shoulder of a freeway exceed twelve hours.

(3) No person, except law enforcement, fire department, emergency management, public or private ambulance, or authorized Department of Roads or local authority personnel, shall loiter or stand or park any vehicle upon any bridge, highway, or structure which is located above or below or crosses over or under the roadway of any highway or approach or exit road thereto.

(4) Whenever a vehicle is disabled or inoperable in a roadway or for any reason obstructs the regular flow of traffic for reasons other than an accident, the driver shall move or cause the vehicle to be moved as soon as practical so as to not obstruct the regular flow of traffic.

(5) This section does not apply to the driver of any vehicle which is disabled while on the roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position until such time as it can be removed pursuant to subsection (4) of this section.

Source: Laws 1973, LB 45, § 70; R.S.1943, (1988), § 39-670; Laws 1993, LB 370, § 260; Laws 1996, LB 43, § 11; Laws 2007, LB561, § 2.

(m) MISCELLANEOUS RULES

60-6,179.01 Use of handheld wireless communication device; prohibited acts; enforcement; violation; penalty.

(1) Except as otherwise provided in subsection (2) of this section, no person shall use a handheld wireless communication device to read a written communication, manually type a written communication, or send a written communication while operating a motor vehicle which is in motion.

(2) The prohibition in subsection (1) of this section does not apply to:

(a) A person performing his or her official duties as a law enforcement officer, a firefighter, an ambulance driver, or an emergency medical technician; or

(b) A person operating a motor vehicle in an emergency situation.

(3) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(4) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

(a) Two hundred dollars for the first offense;

(b) Three hundred dollars for a second offense; and

(c) Five hundred dollars for a third and subsequent offense.

(5) For purposes of this section:

(a)(i) Handheld wireless communication device means any device that provides for written communication between two or more parties and is capable of receiving, displaying, or transmitting written communication.

(ii) Handheld wireless communication device includes, but is not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant, a pager, or a laptop computer.

(iii) Handheld wireless communication device does not include an electronic device that is part of the motor vehicle or permanently attached to the motor vehicle or a handsfree wireless communication device; and

(b) Written communication includes, but is not limited to, a text message, an instant message, electronic mail, and Internet web sites.

Source: Laws 2010, LB945, § 3.
Effective date July 15, 2010.

(n) SPEED RESTRICTIONS

60-6,186 Speed; maximum limits; signs.

(1) Except when a special hazard exists that requires lower speed for compliance with section 60-6,185, the limits set forth in this section and sections 60-6,187, 60-6,188, 60-6,305, and 60-6,313 shall be the maximum lawful speeds unless reduced pursuant to subsection (2) of this section, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

(a) Twenty-five miles per hour in any residential district;

(b) Twenty miles per hour in any business district;

(c) Fifty miles per hour upon any highway that is not dustless surfaced and not part of the state highway system;

(d) Fifty-five miles per hour upon any dustless-surfaced highway not a part of the state highway system;

(e) Sixty miles per hour upon any part of the state highway system other than an expressway or a freeway, except that the Department of Roads may, where existing design and traffic conditions allow, according to an engineering study, authorize a speed limit five miles per hour greater;

(f) Sixty-five miles per hour upon an expressway that is part of the state highway system;

(g) Sixty-five miles per hour upon a freeway that is part of the state highway system but not part of the National System of Interstate and Defense Highways; and

(h) Seventy-five miles per hour upon the National System of Interstate and Defense Highways, except that the maximum speed limit shall be sixty miles per hour for:

(i) Any portion of the National System of Interstate and Defense Highways located in Douglas County; and

(ii) That portion of the National System of Interstate and Defense Highways designated as Interstate 180 in Lancaster County and Interstate 129 in Dakota County.

(2) The maximum speed limits established in subsection (1) of this section may be reduced by the Department of Roads or by local authorities pursuant to section 60-6,188 or 60-6,190.

(3) The Department of Roads and local authorities may erect and maintain suitable signs along highways under their respective jurisdictions in such number and at such locations as they deem necessary to give adequate notice of the speed limits established pursuant to subsection (1) or (2) of this section upon such highways.

Source: Laws 1973, LB 45, § 62; Laws 1974, LB 873, § 1; Laws 1975, LB 381, § 1; Laws 1977, LB 256, § 1; Laws 1987, LB 430, § 1; R.S.1943, (1988), § 39-662; Laws 1993, LB 370, § 282; Laws 1996, LB 901, § 7; Laws 2007, LB35, § 2.

Cross References

Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

60-6,187 Special speed limitations; motor vehicle towing a mobile home; motor-driven cycle.

(1) No person shall operate any motor vehicle when towing a mobile home at a rate of speed in excess of fifty miles per hour.

(2)(a) A person may operate any motor-driven cycle at a speed in excess of thirty-five miles per hour upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least three hundred feet ahead and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(b) A person may operate any motor-driven cycle at a speed in excess of twenty-five miles per hour, but not more than thirty-five miles per hour, upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least one hundred feet ahead, but less than three hundred feet ahead, and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(c) A person shall not operate any motor-driven cycle upon a roadway at nighttime if the headlight or headlights do not reveal a person or vehicle in such roadway at least one hundred feet ahead, or the taillight is not visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

Source: Laws 1973, LB 45, § 66; Laws 1974, LB 873, § 2; Laws 1975, LB 381, § 2; Laws 1977, LB 256, § 2; Laws 1979, LB 23, § 2; Laws 1987, LB 430, § 2; Laws 1987, LB 504, § 2; Laws 1990, LB 369, § 1; R.S.Supp.,1992, § 39-666; Laws 1993, LB 370, § 283; Laws 1996, LB 901, § 8; Laws 2005, LB 80, § 1.

Cross References

Livestock forage vehicles, speed limits, see section 60-6,305.
Mopeds, maximum speed, see section 60-6,313.
Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

60-6,190 Establishment of state speed limits; power of Department of Roads; other than state highway system; power of local authority; signs.

(1) Whenever the Department of Roads determines, upon the basis of an engineering and traffic investigation, that any maximum speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, place, or part of the state highway system outside of the corporate limits of cities and villages as well as inside the corporate limits of cities and villages on freeways which are part of the state highway system, it may determine and set a reasonable and safe maximum speed limit for such intersection, place, or part of such highway which shall be the lawful speed limit when appropriate signs giving notice thereof are erected at such intersection, place, or part of the highway, except that the maximum rural and freeway limits shall not be exceeded. Such a maximum speed limit may be set to be effective at all times or at such times as are indicated upon such signs.

(2) The speed limits set by the department shall not be a departmental rule, regulation, or order subject to the statutory procedures for such rules, regulations, or orders but shall be an authorization over the signature of the Director-State Engineer and shall be maintained on permanent file at the headquarters of the department. Certified copies of such authorizations shall be available from the department at a reasonable cost for duplication. Any change to such an authorization shall be made by a new authorization which cancels the previous authorization and establishes the new limit, but the new limit shall not become effective until signs showing the new limit are erected as provided in subsection (1) of this section.

(3) On county highways which are not part of the state highway system or within the limits of any state institution or any area under control of the Game and Parks Commission or a natural resources district and which are outside of the corporate limits of cities and villages, county boards shall have the same power and duty to alter the maximum speed limits as the department if the change is based on an engineering and traffic investigation comparable to that made by the department. The limit outside of a business or residential district shall not be decreased to less than thirty-five miles per hour.

(4) On all highways within their corporate limits, except on state-maintained freeways which are part of the state highway system, incorporated cities and villages shall have the same power and duty to alter the maximum speed limits as the department if the change is based on engineering and traffic investigation, except that no imposition of speed limits on highways which are part of the state highway system in cities and villages under forty thousand inhabitants shall be effective without the approval of the department.

(5) The director of any state institution, the Game and Parks Commission, or a natural resources district, with regard to highways which are not a part of the state highway system, which are within the limits of such institution or area under Game and Parks Commission or natural resources district control, and which are outside the limits of any incorporated city or village, shall have the same power and duty to alter the maximum speed limits as the department if

the change is based on an engineering and traffic investigation comparable to that made by the department.

(6) Not more than six such speed limits shall be set per mile along a highway, except in the case of reduced limits at intersections. The difference between adjacent speed limits along a highway shall not be reduced by more than twenty miles per hour, and there shall be no limit on the difference between adjacent speed limits for increasing speed limits along a highway.

(7) When the department or a local authority determines by an investigation that certain vehicles in addition to those specified in sections 60-6,187, 60-6,305, and 60-6,313 cannot with safety travel at the speeds provided in sections 60-6,186, 60-6,187, 60-6,189, 60-6,305, and 60-6,313 or set pursuant to this section or section 60-6,188 or 60-6,189, the department or local authority may restrict the speed limit for such vehicles on highways under its respective jurisdiction and post proper and adequate signs.

Source: Laws 1973, LB 45, § 63; Laws 1984, LB 861, § 17; Laws 1986, LB 436, § 1; R.S.1943, (1988), § 39-663; Laws 1993, LB 370, § 286; Laws 1996, LB 901, § 10; Laws 2010, LB805, § 11. Effective date July 15, 2010.

Cross References

Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

(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 employ-

ment 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. If the person's operator's license has been revoked for at least a one-year period, after a minimum of a forty-five-day no driving period, the person may operate a motor vehicle with an ignition interlock permit and an ignition interlock device pursuant to this subdivision and shall retain the ignition interlock permit and ignition interlock device for not less than the remainder of a one-year period or period of revocation ordered by the court, whichever is longer. 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.

(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; Laws 2010, LB924, § 3.
Effective date July 15, 2010.

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.

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 pursuant to subdivision (1)(b) of section 60-6,197.01 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 pursuant to subdivision (1)(b) of section 60-6,197.01 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 subdivision (1)(b) of section 60-6,197.01. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court 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 subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a 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 subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine 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 subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a 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 subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for 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 subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days.

Source: Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB578, § 4; Laws 2008, LB736, § 8; Laws 2009, LB497, § 7; Laws 2010, LB924, § 4.
Effective date July 15, 2010.

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.

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.

60-6,197.08 Driving under influence of alcoholic liquor or drugs; presentence evaluation.

Any person who has been convicted of driving while intoxicated shall, during a presentence evaluation, submit to and participate in an alcohol assessment by a licensed alcohol and drug counselor. The alcohol assessment shall be paid for by the person convicted of driving while intoxicated. At the time of sentencing, the judge, having reviewed the assessment results, may then order the convicted person to follow through on the alcohol assessment results at the convicted person's expense in addition to any penalties deemed necessary.

Source: Laws 2004, LB 208, § 18; Laws 2006, LB 925, § 13.

60-6,197.09 Driving under influence of alcoholic liquor or drugs; not eligible for probation, suspended sentence, or employment driving permit.

Notwithstanding the provisions of section 60-498.02 or 60-6,197.03, a person who commits a violation punishable under subdivision (3)(b) or (c) of section 28-306 or a violation of section 60-6,196, 60-6,197, or 60-6,198 while participating in criminal proceedings for a violation of section 60-6,196, 60-6,197, or 60-6,198, or a city or village ordinance enacted in accordance with section 60-6,196 or 60-6,197, or a law of another state if, at the time of the violation under the law of such other state, the offense for which the person was charged would have been a violation of section 60-6,197, shall not be eligible to receive

a sentence of probation, a suspended sentence, or an employment driving permit authorized under subsection (2) of section 60-498.02 for either violation committed in this state.

Source: Laws 2006, LB 925, § 14.

60-6,198 Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.

(1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person or an unborn child of a pregnant woman shall be guilty of a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for the same period.

(2) For purposes of this section, serious bodily injury shall mean bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

(3) For purposes of this section, unborn child shall have the same meaning as in section 28-396.

Source: Laws 1986, LB 153, § 6; Laws 1992, LB 291, § 13; R.S.Supp.,1992, § 39-669.39; Laws 1993, LB 370, § 307; Laws 1997, LB 364, § 17; Laws 2001, LB 38, § 50; Laws 2006, LB 57, § 10.

Cross References

Conviction of felony involving use of vehicle, transmittal of abstract, see section 60-497.02.

60-6,201 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.

(1) Any test made under section 60-6,197, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.

(2) Any test made under section 60-6,211.02, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of section 60-6,211.01.

(3) To be considered valid, tests of blood, breath, or urine made under section 60-6,197 or tests of blood or breath made under section 60-6,211.02 shall be performed according to methods approved by the Department of Health and Human Services and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service which is defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as such act existed on September 1, 2001, or Title XVIII or XIX of the

federal Social Security Act, as such act existed on September 1, 2001, to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to withdraw blood pursuant to such an order. The department may approve satisfactory techniques or methods to perform such tests and may ascertain the qualifications and competence of individuals to perform such tests and issue permits which shall be subject to termination or revocation at the discretion of the department.

(4) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund as a laboratory service fee.

(5) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Source: Laws 1959, c. 168, § 4, p. 614; Laws 1963, c. 228, § 2, p. 715; Laws 1963, c. 229, § 2, p. 716; Laws 1971, LB 948, § 4; C.S.Supp.,1972, § 39-727.06; Laws 1986, LB 1047, § 1; Laws 1987, LB 224, § 2; Laws 1990, LB 799, § 4; Laws 1992, LB 872, § 2; Laws 1992, LB 291, § 6; R.S.Supp.,1992, § 39-669.11; Laws 1993, LB 370, § 296; Laws 1993, LB 564, § 9; Laws 1996, LB 1044, § 284; Laws 2000, LB 819, § 76; Laws 2000, LB 1115, § 7; Laws 2001, LB 773, § 17; Laws 2007, LB296, § 234.

Cross References

Health Care Facility Licensure Act, see section 71-401.

60-6,202 Driving under influence of alcoholic liquor or drugs; blood test; withdrawing requirements; damages; liability; when.

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to sections 60-6,197 and 60-6,211.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such sections except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-6,197 or 60-6,211.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

Source: Laws 1959, c. 168, § 5, p. 614; Laws 1971, LB 948, § 5; C.S.Supp.,1972, § 39-727.07; Laws 1974, LB 679, § 1; Laws 1975, LB 140, § 1; Laws 1992, LB 291, § 7; R.S.Supp.,1992, § 39-669.12; Laws 1993, LB 370, § 297; Laws 1993, LB 564, § 10; Laws 1997, LB 210, § 5; Laws 2000, LB 819, § 77; Laws 2000, LB 1115, § 8; Laws 2007, LB296, § 235.

Cross References

Health Care Facility Licensure Act, see section 71-401.

60-6,209 License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee.

(1) Any person whose operator's license has been revoked pursuant to a conviction for a violation of sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles, on forms prescribed by the department, requesting the department to make a recommendation to the Board of Pardons for reinstatement of his or her eligibility for an operator's license. Upon receipt of the application, the Director of Motor Vehicles shall review the application if such person has served at least seven years of such revocation and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

(a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs;

(b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;

(c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;

(d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription; and

(e) Such person's operator's license is not currently subject to suspension or revocation for any other reason.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons. Such rules and regulations shall include the requirement that the treatment programs and counselors who provide information about such person to the department must be certified or licensed by the state.

(5) If the Board of Pardons reinstates such person's eligibility for an operator's license or orders a reprieve of such person's motor vehicle operator's license revocation, such reinstatement or reprieve may be conditioned for the duration of the original revocation period on such person's continued recovery. If such person is convicted of any subsequent violation of section 60-6,196 or 60-6,197, the reinstatement of the person's eligibility for an operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's eligibility for an operator's license or orders a reprieve of such person's motor vehicle operator's license revocation, the board shall notify the Department of Motor Vehicles of the reinstatement or reprieve. Such person may apply for an operator's license upon payment of a fee of one hundred twenty-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

Source: Laws 1992, LB 291, § 10; R.S.Supp.,1992, § 39-669.19; Laws 1993, LB 370, § 304; Laws 1998, LB 309, § 18; Laws 2001, LB 38, § 54; Laws 2003, LB 209, § 13; Laws 2004, LB 208, § 12; Laws 2004, LB 1083, § 102; Laws 2008, LB736, § 9.

60-6,210 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.

(1) If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of Nebraska and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a criminal prosecution for a violation punishable under subdivision (3)(b) or (c) of section 28-306 or a violation of section 28-305, 60-6,196, or 60-6,198 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a

peace officer requested the driver to submit to a test as provided in section 60-6,197 or (b) the driver had refused a chemical test.

(2) Any physician, registered nurse, qualified technician, or hospital in this state performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a criminal prosecution under subdivision (3)(b) or (c) of section 28-306 or section 28-305, 60-6,196, or 60-6,198 and (b) to any prosecuting attorney in another state who requests the results for use in a criminal prosecution for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other state if the other state requires a similar disclosure by any hospital or person in such state to any prosecuting attorney in Nebraska who requests the results for use in such a criminal prosecution under the laws of Nebraska.

Source: Laws 1992, LB 872, § 3; R.S.Supp.,1992, § 39-669.20; Laws 1993, LB 370, § 305; Laws 2004, LB 208, § 20; Laws 2006, LB 925, § 15.

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 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 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, 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; Laws 2010, LB924, § 5.
Effective date July 15, 2010.

60-6,211.08 Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts.

(1) For purposes of this section:

(a) Alcoholic beverage means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Open alcoholic beverage container, except as provided in subsection (3) of section 53-123.04 and subdivision (1)(c) of section 53-123.11, means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii)(A) That is open or has a broken seal or (B) the contents of which are partially removed; and

(d) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(2) It is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this state.

(3) Except as provided in section 53-186, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this state or (b) inside a motor vehicle while in a public parking area or on any highway in this state.

Source: Laws 1999, LB 585, § 4; Laws 2006, LB 562, § 6.

60-6,211.09 Continuous alcohol monitoring devices; Office of Probation Administration; duties.

The Office of Probation Administration shall adopt and promulgate rules and regulations to approve the use of continuous alcohol monitoring devices by individuals sentenced to probation for violating section 60-6,196 or 60-6,197.

Source: Laws 2006, LB 925, § 17.

60-6,211.10 Repealed. Laws 2009, LB497, § 12.

(q) LIGHTING AND WARNING EQUIPMENT

60-6,226 Brake and turnsignal light requirements; exceptions; signaling requirements.

(1) Any motor vehicle having four or more wheels which is manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, or any trailer, in use on a highway, shall be equipped with brake and turnsignal lights in good working order.

(2) Motorcycles, motor-driven cycles, motor scooters, bicycles, electric personal assistive mobility devices, vehicles used solely for agricultural purposes, vehicles not designed and intended primarily for use on a highway, and, during daylight hours, fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations shall not be required to have or maintain in working order signal lights required by this section, but they may be so equipped. The operator thereof shall comply with the requirements for utilizing hand and arm signals or for utilizing such signal lights if the vehicle is so equipped.

Source: Laws 1993, LB 370, § 322; Laws 1995, LB 59, § 4; Laws 2002, LB 1105, § 458; Laws 2003, LB 238, § 6; Laws 2005, LB 274, § 243.

Cross References

Hand and arm signals, see sections 60-6,162 and 60-6,163.

60-6,227 Repealed. Laws 2008, LB 756, § 34.

60-6,230 Lights; rotating or flashing; colored lights; when permitted.

(1) Except as provided in sections 60-6,231 to 60-6,233 and subsections (4) and (5) of this section, no person shall operate any motor vehicle or any equipment of any description on any highway in this state with any rotating or flashing light.

(2) Except for stop lights and directional signals, which may be red, yellow, or amber, no person shall display any color of light other than red on the rear of any motor vehicle or any equipment of any kind on any highway within this state.

(3) Amber rotating or flashing lights shall be displayed on vehicles of the Military Department for purpose of convoy control when on any state emergency mission.

(4) A single flashing white light may be displayed on the roof of school transportation vehicles during extremely adverse weather conditions.

(5) Blue and amber rotating or flashing lights may be displayed on vehicles used for the movement of snow when operated by the Department of Roads or any local authority.

Source: Laws 1969, c. 327, § 2, p. 1170; C.S.Supp.,1972, § 39-788.01; Laws 1979, LB 127, § 1; R.S.1943, (1988), § 39-6,148; Laws 1993, LB 370, § 326; Laws 1995, LB 59, § 6; Laws 2008, LB196, § 3.

60-6,231 Flashing or rotating lights; authorized emergency vehicles; colors permitted.

A flashing or rotating red light or red and white light shall be displayed on any authorized emergency vehicle whenever operated in this state. A blue light may also be displayed with such flashing or rotating red light or red and white light. For purposes of this section, an authorized emergency vehicle shall include funeral escort vehicles.

Source: Laws 1969, c. 327, § 3, p. 1171; C.S.Supp.,1972, § 39-788.02; Laws 1989, LB 416, § 1; R.S.Supp.,1992, § 39-6,149; Laws 1993, LB 370, § 327; Laws 2008, LB196, § 4.

60-6,232 Rotating or flashing amber light; when permitted.

A rotating or flashing amber light or lights shall be displayed on the roof of any motor vehicle being operated by any rural mail carrier outside the corporate limits of any municipality in this state on or near any highway in the process of delivering mail.

A rotating or flashing amber light or lights may be displayed on (1) any vehicle of the Military Department while on any state emergency mission, (2) any motor vehicle being operated by any public utility, vehicle service, or towing service or any publicly or privately owned construction or maintenance vehicle while performing its duties on or near any highway, (3) any motor vehicle being operated by any member of the Civil Air Patrol, (4) any pilot vehicle escorting an overdimensional load, (5) any vehicle while actually engaged in the moving of houses, buildings, or other objects of extraordinary bulk, including unbaled livestock forage as authorized by subdivision (2)(f) of

section 60-6,288, or (6) any motor vehicle owned by or operated on behalf of a railroad carrier that is stopped to load or unload passengers.

Source: Laws 1969, c. 327, § 4, p. 1171; Laws 1971, LB 365, § 1; R.S.Supp.,1972, § 39-788.03; Laws 1977, LB 427, § 1; R.S.1943, (1988), § 39-6,150; Laws 1993, LB 370, § 328; Laws 1995, LB 59, § 7; Laws 2000, LB 1361, § 4; Laws 2005, LB 471, § 1.

(r) BRAKES

60-6,246 Trailers; brake requirements; safety chains; when required.

(1) All commercial trailers with a carrying capacity of more than ten thousand pounds and semitrailers shall be equipped on each wheel with brakes that can be operated from the driving position of the towing vehicle.

(2) Cabin trailers and recreational trailers having a gross loaded weight of three thousand pounds or more but less than six thousand five hundred pounds shall be equipped with brakes on at least two wheels, and such trailers with a gross loaded weight of six thousand five hundred pounds or more shall be equipped with brakes on each wheel. The brakes shall be operable from the driving position of the towing vehicle. Such trailers shall also be equipped with a breakaway, surge, or impulse switch on the trailer so that the trailer brakes are activated if the trailer becomes disengaged from the towing vehicle.

(3) Cabin trailers, recreational trailers, and utility trailers, when being towed upon a highway, shall be securely connected to the towing vehicle by means of two safety chains or safety cables in addition to the hitch or other primary connecting device. Such safety chains or safety cables shall be so attached and shall be of sufficient breaking load strength so as to prevent any portion of such trailer drawbar from touching the roadway if the hitch or other primary connecting device becomes disengaged from the towing vehicle.

(4) For purposes of this section:

(a) Recreational trailer means a vehicular unit without motive power primarily designed for transporting a motorboat as defined in section 37-1204 or a vessel as defined in section 37-1203; and

(b) Utility trailer has the same meaning as in section 60-358.

Source: Laws 1959, c. 165, § 2, p. 604; Laws 1972, LB 1164, § 1; Laws 1973, LB 368, § 1; R.S.Supp.,1972, § 39-773.01; Laws 1989, LB 695, § 2; R.S.Supp.,1992, § 39-6,134; Laws 1993, LB 370, § 342; Laws 1993, LB 575, § 30; Laws 1995, LB 6, § 1; Laws 2005, LB 274, § 244.

(s) TIRES

60-6,251 Pneumatic tires; regrooving prohibited; exception.

(1) No person shall alter the traction surface of pneumatic tires by regrooving.

(2) No person shall knowingly operate on any highway in this state any motor vehicle on which the traction surface of any pneumatic tire thereof has been regrooved. No person shall sell, exchange, or offer for sale or exchange such a tire.

(3) This section shall not apply to regrooved commercial vehicle tires which are designed and constructed in such a manner that any regrooving complies with the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363.

Source: Laws 1987, LB 504, § 4; R.S.1943, (1988), § 39-6,131.08; Laws 1993, LB 370, § 347; Laws 2006, LB 1007, § 10.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

60-6,255 Windshield and windows; nontransparent material prohibited; windshield equipment; requirements.

(1) Every motor vehicle registered pursuant to the Motor Vehicle Registration Act, except motorcycles, shall be equipped with a front windshield.

(2) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster, or other nontransparent material upon the front windshield, side wing vents, or side or rear windows of such motor vehicle other than a certificate or other paper required to be so displayed by law. The front windshield, side wing vents, and side or rear windows may have a visor or other shade device which is easily moved aside or removable, is normally used by a motor vehicle operator during daylight hours, and does not impair the driver's field of vision.

(3) Every windshield on a motor vehicle, other than a motorcycle, shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

Source: Laws 1931, c. 110, § 41, p. 318; C.S.Supp.,1941, § 39-1172; R.S.1943, § 39-776; Laws 1977, LB 314, § 3; Laws 1987, LB 504, § 7; Laws 1989, LB 155, § 1; R.S.Supp.,1992, § 39-6,136; Laws 1993, LB 370, § 351; Laws 2005, LB 274, § 245.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-6,261 Windshield and windows; funeral vehicles; exception.

Sections 60-6,257 to 60-6,259 shall not apply to the side or rear windows of funeral coaches, hearses, or other vehicles operated in the normal course of business by a funeral establishment licensed under section 38-1419.

Source: Laws 1989, LB 155, § 6; R.S.Supp.,1992, § 39-6,136.05; Laws 1993, LB 370, § 357; Laws 2007, LB463, § 1175.

(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.

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.

(x) MISCELLANEOUS EQUIPMENT PROVISIONS

60-6,284 Towing; drawbars or other connections; length; red flag required, when.

The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed fifteen feet in length from one vehicle to the other, except a vehicle being towed with a connection device that is an integral component of the vehicle and is designed to attach to a lead unit with construction in such a manner as to allow articulation at the attachment point on the chassis of the towed vehicle but not to allow lateral or side-to-side movement. Such connecting device shall meet the safety standards for towbar failure or disconnection in the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363 and shall have displayed at approximately the halfway point between the towing vehicle and the towed vehicle on the connecting mechanism a red flag or other signal or cloth not less than twelve inches both in length and width that shall be at least five feet and not more than ten feet from the level of the paving and shall be displayed along the outside line on both sides of the towing and towed vehicles. Whenever such connection consists of a chain, rope, or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than twelve inches both in length and width.

Source: Laws 1931, c. 110, § 37, p. 317; C.S.Supp.,1941, § 39-1168; R.S.1943, § 39-772; Laws 1980, LB 785, § 1; R.S.1943, (1988), § 39-6,132; Laws 1993, LB 370, § 380; Laws 2006, LB 1007, § 11.

(y) SIZE, WEIGHT, AND LOAD

60-6,288 Vehicles; width limit; exceptions; conditions; Director-State Engineer; powers.

(1) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any portion of the National System of Interstate and Defense Highways. The Director-State Engineer shall adopt and promulgate rules and regulations, consistent with federal requirements, designating safety devices which shall be excluded in determining vehicle width.

(2) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any highway which is not a portion of the National System of Interstate and Defense Highways, except that such prohibition shall not apply to:

(a) Farm equipment in temporary movement, during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with, in the normal course of farm operations;

(b) Combines eighteen feet or less in width, while in the normal course of farm operations and while being driven during daylight hours or during hours

of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(c) Combines in excess of eighteen feet in width, while in the normal course of farm operations, while being driven during daylight hours for distances of twenty-five miles or less on highways and while preceded by a well-lighted pilot vehicle or flagperson, except that such combines may be driven on highways while in the normal course of farm operations for distances of twenty-five miles or less and while preceded by a well-lighted pilot vehicle or flagperson during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(d) Combines and vehicles used in transporting combines or other implements of husbandry, and only when transporting combines or other implements of husbandry, to be engaged in harvesting or other agricultural work, while being transported into or through the state during daylight hours, when the total width including the width of the combine or other implement of husbandry being transported does not exceed fifteen feet, except that vehicles used in transporting combines or other implements of husbandry may, when necessary to the harvesting operation or other agricultural work, travel unloaded for distances not to exceed twenty-five miles, while the combine or other implement of husbandry to be transported is engaged in a harvesting operation or other agricultural work;

(e) Farm equipment dealers hauling, driving, delivering, or picking up farm equipment, including portable livestock buildings not exceeding fourteen feet in width, or implements of husbandry during daylight hours;

(f) Livestock forage vehicles loaded or unloaded that comply with subsection (2) of section 60-6,305;

(g) During daylight hours only, vehicles en route to pick up, delivering, or returning unloaded from delivery of baled livestock forage which, including the load if any, may be twelve feet in width;

(h) Mobile homes or prefabricated livestock buildings not exceeding sixteen feet in width and with an outside tire width dimension not exceeding one hundred twenty inches moving during daylight hours;

(i) Self-propelled specialized mobile equipment with a fixed load when:

(i) The self-propelled specialized mobile equipment will be transported on a state highway, excluding any portion of the National System of Interstate and Defense Highways, on a city street, or on a road within the corporate limits of a city;

(ii) The city in which the self-propelled specialized mobile equipment is intended to be transported has authorized a permit pursuant to section 60-6,298 for the transportation of the self-propelled specialized mobile equipment, specifying the route to be used and the hours during which the self-propelled specialized mobile equipment can be transported, except that no permit shall be issued by a city for travel on a state highway containing a bridge or structure which is structurally inadequate to carry the self-propelled specialized mobile equipment as determined by the Department of Roads;

(iii) The self-propelled specialized mobile equipment's gross weight does not exceed ninety-four thousand pounds if the self-propelled specialized mobile equipment has four axles or seventy-two thousand pounds if the self-propelled specialized mobile equipment has three axles; and

(iv) If the self-propelled specialized mobile equipment has four axles, the maximum weight on each set of tandem axles does not exceed forty-seven thousand pounds, or if the self-propelled specialized mobile equipment has three axles, the maximum weight on the front axle does not exceed twenty-five thousand pounds and the total maximum weight on the rear tandem axles does not exceed forty-seven thousand pounds;

(j) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(k) A motor home or travel trailer, as those terms are defined in section 71-4603, which may exceed one hundred and two inches if such excess width is attributable to an appurtenance that extends no more than six inches beyond the body of the vehicle. For purposes of this subdivision, the term appurtenance includes (i) an awning and its support hardware and (ii) any appendage that is intended to be an integral part of a motor home or travel trailer and that is installed by the manufacturer or dealer. The term appurtenance does not include any item that is temporarily affixed or attached to the exterior of the motor home or travel trailer for purposes of transporting the vehicular unit from one location to another. Appurtenances shall not be considered in calculating the gross trailer area as defined in section 71-4603.

(3) The Director-State Engineer, with respect to highways under his or her jurisdiction, may designate certain highways upon which vehicles of no more than ninety-six inches in width may be permitted to travel. Highways so designated shall be limited to one or more of the following:

(a) Highways with traffic lanes of ten feet or less;

(b) Highways upon which are located narrow bridges; and

(c) Highways which because of sight distance, surfacing, unusual curves, topographic conditions, or other unusual circumstances would not in the opinion of the Director-State Engineer safely accommodate vehicles of more than ninety-six inches in width.

Source: Laws 1933, c. 105, § 1, p. 425; C.S.Supp.,1941, § 39-1032; R.S.1943, § 39-719; Laws 1957, c. 156, § 1, p. 563; Laws 1961, c. 182, § 1, p. 544; Laws 1963, c. 219, § 1, p. 691; Laws 1963, c. 221, § 1, p. 697; Laws 1963, c. 220, § 1, p. 693; Laws 1965, c. 212, § 1, p. 621; Laws 1969, c. 308, § 2, p. 1101; Laws 1973, LB 491, § 1; R.S.Supp.,1973, § 39-719; Laws 1974, LB 593, § 1; Laws 1975, LB 306, § 1; Laws 1977, LB 427, § 2; Laws 1978, LB 576, § 1; Laws 1978, LB 750, § 2; Laws 1980, LB 284, § 1; Laws 1981, LB 285, § 2; Laws 1982, LB 417, § 1; Laws 1983, LB 244, § 1; Laws 1985, LB 553, § 3; Laws 1990, LB 369, § 3; R.S.Supp.,1992, § 39-6,177; Laws 1993, LB 370, § 384; Laws 1993, LB 413, § 1; Laws 1993, LB 575, § 35; Laws 1997, LB 226, § 1; Laws 1999, LB 704, § 47; Laws 2000, LB 1361, § 5; Laws 2001, LB 376, § 3; Laws 2008, LB756, § 23.

Cross References

Weighing stations, see sections 60-1301 to 60-1309.

60-6,289 Vehicles; height; limit; height of structure; damages.

(1) No vehicle unladen or with load shall exceed a height of fourteen feet, six inches, except:

(a) Combines or vehicles used in transporting combines, to be engaged in harvesting within or without the state, moving into or through the state during daylight hours when the overall height does not exceed fifteen feet, six inches;

(b) Livestock forage vehicles with or without load that comply with subsection (2) of section 60-6,305;

(c) Farm equipment or implements of husbandry being driven, picked up, or delivered during daylight hours by farm equipment dealers shall not exceed fifteen feet, six inches;

(d) Self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met;

(e) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(f) Vehicles with a baled livestock forage load that comply with subsection (4) of section 60-6,305 when the overall height does not exceed fifteen feet, six inches.

(2) No person shall be required to raise, alter, construct, or reconstruct any underpass, bridge, wire, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. The owners, lessees, and operators, jointly and severally, of vehicles exceeding twelve feet, six inches, in height shall assume the risk of loss to the vehicle or its load and shall be liable for any damages that result to overhead obstructions from operation of a vehicle exceeding twelve feet, six inches, in height.

Source: Laws 1933, c. 105, § 2, p. 425; C.S.Supp.,1941, § 39-1033; Laws 1943, c. 133, § 1, p. 446; R.S.1943, § 39-720; Laws 1951, c. 117, § 1, p. 526; Laws 1957, c. 156, § 2, p. 563; Laws 1969, c. 308, § 3, p. 1102; Laws 1973, LB 491, § 2; R.S.Supp.,1973, § 39-720; Laws 1974, LB 593, § 2; Laws 1977, LB 211, § 3; Laws 1978, LB 750, § 3; Laws 1980, LB 284, § 2; Laws 1985, LB 553, § 4; R.S.1943, (1988), § 39-6,178; Laws 1993, LB 370, § 385; Laws 2000, LB 1361, § 6; Laws 2008, LB756, § 24; Laws 2010, LB820, § 1.
Effective date July 15, 2010.

60-6,290 Vehicles; length; limit; exceptions.

(1)(a) No vehicle shall exceed a length of forty feet, extreme overall dimensions, inclusive of front and rear bumpers including load, except that:

(i) A bus or a motor home, as defined in section 71-4603, may exceed the forty-foot limitation but shall not exceed a length of forty-five feet;

(ii) A truck-tractor may exceed the forty-foot limitation;

(iii) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation; and

(iv) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was not actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation but shall not exceed a length of fifty-three feet including load.

(b) No combination of vehicles shall exceed a length of sixty-five feet, extreme overall dimensions, inclusive of front and rear bumpers and including load, except:

(i) One truck and one trailer, loaded or unloaded, used in transporting implements of husbandry to be engaged in harvesting, while being transported into or through the state during daylight hours if the total length does not exceed seventy-five feet including load;

(ii) A truck-tractor single semitrailer combination;

(iii) A truck-tractor semitrailer trailer combination, but the semitrailer trailer portion of such combination shall not exceed sixty-five feet inclusive of connective devices; and

(iv) A driveaway saddlemount vehicle transporter combination and driveaway saddlemount with fullmount vehicle transporter combination, but the total overall length shall not exceed ninety-seven feet.

(c) A truck shall be construed to be one vehicle for the purpose of determining length.

(d) A trailer shall be construed to be one vehicle for the purpose of determining length.

(2) Subsection (1) of this section shall not apply to:

(a) Extra-long vehicles which have been issued a permit pursuant to section 60-6,292;

(b) Vehicles which have been issued a permit pursuant to section 60-6,299;

(c) The temporary moving of farm machinery during daylight hours in the normal course of farm operations;

(d) The movement of unbaled livestock forage vehicles, loaded or unloaded;

(e) The movement of public utility or other construction and maintenance material and equipment at any time;

(f) Farm equipment dealers hauling, driving, delivering, or picking up farm equipment or implements of husbandry within the county in which the dealer maintains his or her place of business, or in any adjoining county or counties, and return;

(g) The overhang of any motor vehicle being hauled upon any lawful combination of vehicles, but such overhang shall not exceed the distance from the rear axle of the hauled motor vehicle to the closest bumper thereof;

(h) The overhang of a combine to be engaged in harvesting, while being transported into or through the state driven during daylight hours by a truck-tractor semitrailer combination, but the length of the semitrailer, including overhang, shall not exceed sixty-three feet and the maximum semitrailer length shall not exceed fifty-three feet;

(i) Any self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met; or

(j) One truck-tractor two trailer combination or one truck-tractor semitrailer trailer combination used in transporting equipment utilized by custom harvesters under contract to agricultural producers to harvest wheat, soybeans, or milo during the months of April through November but the length of the property-carrying units, excluding load, shall not exceed eighty-one feet six inches.

(3) The length limitations of this section shall be exclusive of safety and energy conservation devices such as rearview mirrors, turnsignal lights, marker lights, steps and handholds for entry and egress, flexible fender extensions,

mudflaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors, and other devices necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded from the limitations of this section shall have by its design or use the capability to carry cargo.

Source: Laws 1933, c. 105, § 3, p. 425; Laws 1933, c. 102, § 1, p. 414; Laws 1935, c. 86, § 1, p. 277; Laws 1939, c. 50, § 1, p. 217; C.S.Supp.,1941, § 39-1034; R.S.1943, § 39-721; Laws 1947, c. 146, § 1, p. 402; Laws 1951, c. 117, § 2, p. 527; Laws 1953, c. 133, § 1, p. 413; Laws 1957, c. 156, § 3, p. 564; Laws 1959, c. 164, § 1, p. 599; Laws 1959, c. 165, § 1, p. 603; Laws 1961, c. 309, § 1, p. 980; Laws 1963, c. 222, § 1, p. 699; Laws 1963, c. 220, § 2, p. 694; Laws 1963, c. 223, § 1, p. 701; Laws 1965, c. 213, § 1, p. 625; Laws 1971, LB 530, § 1; C.S.Supp.,1972, § 39-721; Laws 1974, LB 920, § 2; Laws 1979, LB 112, § 1; Laws 1980, LB 785, § 2; Laws 1980, LB 284, § 3; Laws 1982, LB 383, § 1; Laws 1983, LB 411, § 1; Laws 1984, LB 983, § 3; Laws 1985, LB 553, § 5; Laws 1987, LB 224, § 13; R.S.1943, (1988), § 39-6,179; Laws 1993, LB 370, § 386; Laws 1993, LB 575, § 36; Laws 1996, LB 1104, § 3; Laws 1997, LB 720, § 18; Laws 2000, LB 1361, § 7; Laws 2001, LB 376, § 4; Laws 2006, LB 853, § 21; Laws 2008, LB756, § 25.

60-6,294 Vehicles; weight limit; further restrictions by department, when authorized; axle load; load limit on bridges; overloading; liability.

(1) Every vehicle, whether operated singly or in a combination of vehicles, and every combination of vehicles shall comply with subsections (2) and (3) of this section except as provided in sections 60-6,294.01 and 60-6,297. The limitations imposed by this section shall be supplemental to all other provisions imposing limitations upon the size and weight of vehicles.

(2) No wheel of a vehicle or trailer equipped with pneumatic or solid rubber tires shall carry a gross load in excess of ten thousand pounds on any highway nor shall any axle carry a gross load in excess of twenty thousand pounds on any highway. An axle load shall be defined as the total load transmitted to the highway by all wheels the centers of which may be included between two parallel transverse vertical planes forty inches apart extending across the full width of the vehicle.

(3) No group of two or more consecutive axles shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, except that the maximum load carried on any group of two or more axles shall not exceed eighty thousand pounds on the National System of Interstate and Defense Highways unless the Director-State Engineer pursuant to section 60-6,295 authorizes a greater weight.

Distance in feet between the extremes of any group of two or more consecutive	Maximum load in pounds carried on any group of two or more consecutive axles					
	Two	Three	Four	Five	Six	Seven

axles	Axles	Axles	Axles	Axles	Axles	Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000					
8	34,000	42,000				
9	39,000	42,500				
10	40,000	43,500				
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,000	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,500	54,000	59,000		
19		50,000	54,500	60,000		
20		51,000	55,500	60,500		
21		51,500	56,000	61,000		
22		52,500	56,500	61,500		
23		53,000	57,500	62,500		
24		54,000	58,000	63,000		
25		54,500	58,500	63,500	69,000	
26		55,500	59,500	64,000	69,500	
27		56,000	60,000	65,000	70,000	
28		57,000	60,500	65,500	71,000	
29		57,500	61,500	66,000	71,500	
30		58,500	62,000	66,500	72,000	
31		59,000	62,500	67,500	72,500	
32		60,000	63,500	68,000	73,000	
33			64,000	68,500	74,000	
34			64,500	69,000	74,500	
35			65,500	70,000	75,000	
36			66,000	70,500	75,500	
37			66,500	71,000	76,000	81,500
38			67,500	72,000	77,000	82,000
39			68,000	72,500	77,500	82,500
40			68,500	73,000	78,000	83,500
41			69,500	73,500	78,500	84,000
42			70,000	74,000	79,000	84,500
43			70,500	75,000	80,000	85,000
44			71,500	75,500	80,500	85,500
45			72,000	76,000	81,000	86,000
46			72,500	76,500	81,500	87,000
47			73,500	77,500	82,000	87,500
48			74,000	78,000	83,000	88,000
49			74,500	78,500	83,500	88,500
50			75,500	79,000	84,000	89,000
51			76,000	80,000	84,500	89,500
52			76,500	80,500	85,000	90,500
53			77,500	81,000	86,000	91,000
54			78,000	81,500	86,500	91,500
55			78,500	82,500	87,000	92,000
56			79,500	83,000	87,500	92,500
57			80,000	83,500	88,000	93,000
58				84,000	89,000	94,000

59	85,000	89,500	94,500
60	85,500	90,000	95,000

(4) The distance between axles shall be measured to the nearest foot. When a fraction is exactly one-half foot, the next larger whole number shall be used, except that:

(a) Any group of three axles shall be restricted to a maximum load of thirty-four thousand pounds unless the distance between the extremes of the first and third axles is at least ninety-six inches in fact; and

(b) The maximum gross load on any group of two axles, the distance between the extremes of which is more than eight feet but less than eight feet six inches, shall be thirty-eight thousand pounds.

(5) The limitations of subsections (2) through (4) of this section shall apply as stated to all main, rural, and intercity highways but shall not be construed as inhibiting heavier axle loads in metropolitan areas, except on the National System of Interstate and Defense Highways, if such loads are not prohibited by city ordinance.

(6) The weight limitations of wheel and axle loads as defined in subsections (2) through (4) of this section shall be restricted to the extent deemed necessary by the Department of Roads for a reasonable period when road subgrades or pavements are weak or are materially weakened by climatic conditions.

(7) Two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each when the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six, thirty-seven, or thirty-eight feet except as provided in section 60-6,297. Such vehicles shall be subject to section 60-6,301.

(8) If any vehicle crosses a bridge with a total gross load in excess of the posted capacity of such bridge and as a result of such crossing any damage results to the bridge, the owner of such vehicle shall be responsible for all of such damage.

(9) Vehicles equipped with a greater number of axles than provided in the tables in subsection (3) of this section shall be legal if they do not exceed the maximum load upon any wheel or axle, the maximum load upon any group of two or more consecutive axles, and the total gross weight, or any of such weights as provided in subsections (2) and (3) of this section.

(10) Subsections (1) through (9) of this section shall not apply to a vehicle which has been issued a permit pursuant to section 60-6,299, self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met, or an emergency vehicle when the requirements of subdivision (1)(a)(v) of section 60-6,298 are met.

(11) Any two consecutive axles the centers of which are more than forty inches and not more than ninety-six inches apart, measured to the nearest inch between any two adjacent axles in the series, shall be defined as tandem axles, and the gross weight transmitted to the road surface through such series shall not exceed thirty-four thousand pounds. No axle of the series shall exceed the maximum weight permitted under this section for a single axle.

(12) Dummy axles shall be disregarded in determining the lawful weight of a vehicle or vehicle combination for operation on the highway. Dummy axle shall mean an axle attached to a vehicle or vehicle combination in a manner so that

it does not articulate or substantially equalize the load and does not carry at least the lesser of eight thousand pounds or eight percent of the gross weight of the vehicle or vehicle combination.

(13) The maximum gross weight limit and the axle weight limit for any vehicle or combination of vehicles equipped with idle reduction technology may be increased by an amount necessary to compensate for the additional weight of the idle reduction technology as provided in 23 U.S.C. 127(a)(12), as such section existed on July 18, 2008. The additional amount of weight allowed by this subsection shall not exceed four hundred pounds and shall not be construed to be in addition to the five-percent-in-excess-of-maximum-load provision of subdivision (1) of section 60-6,301.

Source: Laws 1933, c. 105, § 4, p. 426; Laws 1939, c. 50, § 2, p. 218; C.S.Supp.,1941, § 39-1035; Laws 1943, c. 133, § 2, p. 446; R.S. 1943, § 39-722; Laws 1945, c. 91, § 1, p. 312; Laws 1947, c. 147, § 1, p. 403; Laws 1953, c. 134, § 1, p. 416; Laws 1953, c. 131, § 9, p. 404; Laws 1959, c. 164, § 2, p. 600; Laws 1969, c. 318, § 1, p. 1150; C.S.Supp.,1972, § 39-722; Laws 1980, LB 284, § 4; Laws 1982, LB 383, § 2; Laws 1984, LB 726, § 1; Laws 1985, LB 553, § 6; Laws 1987, LB 132, § 1; Laws 1990, LB 369, § 4; R.S.Supp.,1992, § 39-6,180; Laws 1993, LB 370, § 390; Laws 1995, LB 186, § 1; Laws 1996, LB 1104, § 4; Laws 2000, LB 1361, § 8; Laws 2005, LB 82, § 3; Laws 2008, LB756, § 26.

Cross References

Special load restrictions, rules and regulations of Department of Roads, adoption, penalty, see sections 39-102 and 39-103.
Weighing stations, see sections 60-1301 to 60-1309.

60-6,297 Disabled vehicles; length and load limitations; exception.

The provisions of subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply when a disabled combination of vehicles is towed if the combination of vehicles, together with the wrecker or tow truck, does not exceed one hundred fifty feet, inclusive of front and rear bumpers including load. Such exception shall apply only if the disabled combination of vehicles is being towed directly to the nearest place of secure safekeeping. The towing vehicle shall be connected with the air brakes and brake lights of the towed vehicle. For purposes of this section, place of secure safekeeping means a place off the traveled portion of the highway that can accommodate the parking of such vehicles in order for the vehicles to be (1) repaired or (2) dismantled and operated in compliance with subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294.

Source: Laws 1982, LB 383, § 3; R.S.1943, (1988), § 39-6,180.02; Laws 1993, LB 370, § 393; Laws 2003, LB 137, § 1; Laws 2005, LB 82, § 4.

60-6,298 Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.

(1)(a) The Department of Roads or the Nebraska State Patrol, with respect to highways under its jurisdiction including the National System of Interstate and Defense Highways, and local authorities, with respect to highways under their jurisdiction, may in their discretion upon application and good cause being

shown therefor issue a special, continuing, or continuous permit in writing authorizing the applicant or his or her designee:

(i) To operate or move a vehicle, a combination of vehicles, or objects of a size or weight of vehicle or load exceeding the maximum specified by law when such permit is necessary:

(A) To further the national defense or the general welfare;

(B) To permit movement of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment; or

(C) Because of an emergency, an unusual circumstance, or a very special situation;

(ii) To operate vehicles, for a distance up to one hundred twenty miles, loaded up to fifteen percent greater than the maximum weight specified by law, up to ten percent greater than the maximum length specified by law, except that for a truck-tractor semitrailer trailer combination utilized to transport sugar beets which may be up to twenty-five percent greater than the maximum length specified by law, or both, when carrying grain or other seasonally harvested products from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such grain or products in abundant quantities would cause an economic loss to the person or persons whose grain or products are being transported or when failure to move such grain or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. The distance limitation may be waived for vehicles when carrying dry beans from the field where harvested to storage or market when dry beans are not normally stored, purchased, or used within the permittee's local area and must be transported more than one hundred twenty miles to an available marketing or storage destination. No permit shall authorize a weight greater than twenty thousand pounds on any single axle;

(iii) To transport an implement of husbandry which does not exceed twelve and one-half feet in width during daylight hours, except that the permit shall not allow transport on holidays;

(iv) To operate one or more recreational vehicles, as defined in section 71-4603, exceeding the maximum width specified by law if movement of the recreational vehicles is prior to retail sale and the recreational vehicles comply with subdivision (2)(k) of section 60-6,288; or

(v) To operate an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, if the applicant or his or her designee is a manufacturer or sales agent of the emergency vehicle. No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on the tandem axle.

(b) No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the temporary movement on highways other than dustless-surfaced state highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

(2) The application for any such permit shall specifically describe the vehicle, the load to be operated or moved, whenever possible the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous or continuing operation.

(3) The department or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit the number of days during which the permit is valid, to limit the number of trips, to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or to issue a continuous or continuing permit for use on all highways, including the National System of Interstate and Defense Highways. The permits are subject to reasonable conditions as to periodic renewal of such permit and as to operation or movement of such vehicles. The department or local authority may otherwise limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures or undue danger to the public safety. The department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(4) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. Each such permit shall state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed. No person shall violate any of the terms or conditions of such special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:

(a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or

(b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(5) The department or local authority issuing a permit as provided in this section may adopt and promulgate rules and regulations with respect to the issuance of permits provided for in this section.

(6) The department shall make available applications for permits authorized pursuant to subdivisions (1)(a)(ii) and (1)(a)(iii) of this section in the office of each county treasurer. The department may make available applications for all other permits authorized by this section to the office of the county treasurer and may make available applications for all permits authorized by this section to any other location chosen by the department.

(7) The department or local authority issuing a permit may require a permit fee of not to exceed twenty-five dollars, except that:

(a) The fee for a continuous or continuing permit may not exceed twenty-five dollars for a ninety-day period, fifty dollars for a one-hundred-eighty-day period, or one hundred dollars for a one-year period; and

(b) The fee for permits issued pursuant to subdivision (1)(a)(ii) of this section shall be twenty-five dollars for a thirty-day permit and fifty dollars for a sixty-day permit. Permits issued pursuant to such subdivision shall be valid for thirty days or sixty days and shall be renewable for a total number of days not to exceed one hundred and twenty days per year.

A vehicle or combination of vehicles for which an application for a permit is requested pursuant to this section shall be registered under section 60-3,147 or 60-3,198 for the maximum gross vehicle weight that is permitted pursuant to section 60-6,294 before a permit shall be issued.

Source: Laws 1957, c. 156, § 4, p. 565; Laws 1961, c. 183, § 1, p. 546; Laws 1963, c. 220, § 3, p. 695; Laws 1963, c. 226, § 1, p. 708; Laws 1965, c. 214, § 1, p. 627; Laws 1967, c. 235, § 1, p. 627; Laws 1972, LB 1337, § 1; Laws 1973, LB 152, § 1; R.S.Supp.,1973, § 39-722.01; Laws 1975, LB 306, § 2; Laws 1979, LB 287, § 1; Laws 1980, LB 842, § 1; Laws 1981, LB 285, § 3; Laws 1986, LB 122, § 1; Laws 1986, LB 833, § 1; R.S.1943, (1988), § 39-6,181; Laws 1993, LB 370, § 394; Laws 1993, LB 176, § 1; Laws 1994, LB 1061, § 4; Laws 1995, LB 467, § 15; Laws 1996, LB 1306, § 2; Laws 1997, LB 122, § 1; Laws 1997, LB 261, § 1; Laws 2000, LB 1361, § 9; Laws 2001, LB 376, § 5; Laws 2003, LB 563, § 33; Laws 2005, LB 82, § 5; Laws 2005, LB 274, § 246; Laws 2010, LB820, § 2.
Effective date July 15, 2010.

Cross References

Rules and regulations of Department of Roads, adoption, penalty, see sections 39-102 and 39-103.

60-6,301 Vehicles; overload; reduce or shift load; exceptions; permit fee; warning citation; when.

When any motor vehicle, semitrailer, or trailer is operated upon the highways of this state carrying a load in excess of the maximum weight permitted by section 60-6,294, the load shall be reduced or shifted to within such maximum tolerance before being permitted to operate on any public highway of this state, except that:

(1) If any motor vehicle, semitrailer, or trailer exceeds the maximum load on only one axle, only one tandem axle, or only one group of axles when (a) the distance between the first and last axle of such group of axles is twelve feet or less, (b) the excess axle load is no more than five percent in excess of the maximum load for such axle, tandem axle, or group of axles permitted by such section, while the vehicle or combination of vehicles is within the maximum gross load, and (c) the load on such vehicle is such that it can be shifted or the configuration of the vehicle can be changed so that all axles, tandem axle, or groups of axles are within the maximum permissible limit for such axle, tandem axle, or group of axles, such shift or change of configuration may be made without penalty;

(2) Any motor vehicle, semitrailer, or trailer carrying only a load of livestock may exceed the maximum load as permitted by such section on only one axle, only one tandem axle, or only one group of axles when the distance between the

first and last axle of the group of axles is six feet or less if the excess load on the axle, tandem axle, or group of axles is caused by a shifting of the weight of the livestock by the livestock and if the vehicle or combination of vehicles is within the maximum gross load as permitted by such section;

(3) With a permit issued by the Department of Roads or the Nebraska State Patrol, a truck with an enclosed body and a compacting mechanism, designed and used exclusively for the collection and transportation of garbage or refuse, may exceed the maximum load as permitted by such section by no more than twenty percent on only one axle, only one tandem axle, or only one group of axles when the vehicle is laden with garbage or refuse if the vehicle is within the maximum gross load as permitted by such section. There shall be a permit fee of ten dollars per month or one hundred dollars per year. The permit may be issued for one or more months up to one year, and the term of applicability shall be stated on the permit;

(4) Any motor vehicle, semitrailer, or trailer carrying any kind of a load, including livestock, which exceeds the legal maximum gross load by five percent or less may proceed on its itinerary and unload the cargo carried thereon to the maximum legal gross weight at the first unloading facility on the itinerary where the cargo can be properly protected. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator; and

(5) Any motor vehicle, semitrailer, or trailer carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any tandem axle, group of axles, and gross weight. Any truck with no more than a single rear axle carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any single axle and gross weight. The owner or a representative of the owner of the agricultural product shall furnish the driver of the loaded vehicle a signed statement of origin and destination.

Nothing in this section shall be construed to permit to be operated on the National System of Interstate and Defense Highways any vehicle or combination of vehicles which exceeds any of the weight limitations applicable to such system as contained in section 60-6,294.

If the maximum legal gross weight or axle weight of any vehicle is exceeded by five percent or less and the arresting peace officer or carrier enforcement officer has reason to believe that such excessive weight is caused by snow, ice, or rain, the officer may issue a warning citation to the operator.

Source: Laws 1953, c. 134, § 5, p. 420; Laws 1955, c. 150, § 1, p. 446; Laws 1963, c. 226, § 3, p. 710; Laws 1969, c. 318, § 4, p. 1156; Laws 1973, LB 491, § 5; R.S.Supp.,1973, § 39-723.07; Laws 1974, LB 920, § 5; Laws 1976, LB 823, § 1; Laws 1977, LB 427, § 3; Laws 1980, LB 785, § 4; Laws 1984, LB 726, § 6; Laws 1986, LB 833, § 2; R.S.1943, (1988), § 39-6,185; Laws 1993, LB 370, § 397; Laws 2000, LB 1361, § 10; Laws 2007, LB148, § 1.

60-6,304 Load; contents; requirements; violation; penalty.

(1) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from the vehicle.

(2) No person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any vehicle on any hard-surfaced state highway if such material protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering.

(3) No person shall drive or move a motor vehicle, trailer, or semitrailer upon any highway unless the cargo or contents carried by the motor vehicle, trailer, or semitrailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the motor vehicle, trailer, or semitrailer or in the distributing or securing of the cargo or contents carried by the motor vehicle, trailer, or semitrailer shall be secured to prevent cargo or contents falling from the vehicle. The means of securement to the motor vehicle, trailer, or semitrailer must be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to assure that cargo or contents will not fall from the vehicle.

(4) Any person who violates any provision of this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1969, c. 304, § 1, p. 1095; C.S.Supp.,1972, § 39-735.02; Laws 1974, LB 593, § 7; Laws 1977, LB 41, § 21; R.S.1943, (1988), § 39-6,129; Laws 1993, LB 370, § 400; Laws 1993, LB 575, § 28; Laws 2002, LB 1105, § 463; Laws 2007, LB147, § 1.

(bb) SPECIAL RULES FOR MOPEDS

60-6,309 Moped; statutes; applicable.

Mopeds, their owners, and their operators shall be subject to the Motor Vehicle Operator's License Act, but shall be exempt from the requirements of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

Source: Laws 1979, LB 23, § 3; Laws 1986, LB 731, § 2; R.S.1943, (1988), § 39-6,196; Laws 1993, LB 370, § 405; Laws 2005, LB 274, § 247; Laws 2005, LB 276, § 104.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

60-6,310 Moped; operation; license required.

No person shall operate a moped upon a highway unless such person has a valid operator's license.

Source: Laws 1979, LB 23, § 4; R.S.1943, (1988), § 39-6,197; Laws 1993, LB 370, § 406; Laws 2008, LB756, § 27.

(dd) SPECIAL RULES FOR SNOWMOBILES

60-6,320 Snowmobiles; operate, defined.

For purposes of sections 60-6,320 to 60-6,346, operate means to ride in or on and control the operation of a snowmobile.

Source: Laws 1971, LB 330, § 1; Laws 1972, LB 1149, § 1; R.S.1943, (1988), § 60-2001; Laws 1993, LB 370, § 416; Laws 1993, LB 121, § 392; Laws 2005, LB 274, § 248.

60-6,321 Repealed. Laws 2005, LB 274, § 286.

60-6,322 Repealed. Laws 2005, LB 274, § 286.

60-6,323 Repealed. Laws 2005, LB 274, § 286.

60-6,324 Repealed. Laws 2005, LB 274, § 286.

60-6,325 Repealed. Laws 2005, LB 274, § 286.

60-6,326 Repealed. Laws 2005, LB 274, § 286.

60-6,327 Repealed. Laws 2005, LB 274, § 286.

60-6,328 Repealed. Laws 2005, LB 274, § 286.

60-6,329 Repealed. Laws 2005, LB 274, § 286.

60-6,330 Repealed. Laws 2005, LB 274, § 286.

60-6,331 Repealed. Laws 2005, LB 274, § 286.

60-6,332 Repealed. Laws 2005, LB 274, § 286.

60-6,333 Repealed. Laws 2005, LB 274, § 286.

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

60-6,347 Minibikes; exemptions from certain requirements.

Minibikes, their owners, and their operators shall be exempt from the requirements of the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

Source: Laws 1972, LB 1196, § 5; Laws 1981, LB 285, § 8; Laws 1986, LB 731, § 3; Laws 1989, LB 285, § 132; R.S.Supp.,1992, § 60-2101.01; Laws 1993, LB 370, § 443; Laws 2004, LB 812, § 1; Laws 2005, LB 274, § 249.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

60-6,355 All-terrain vehicle, defined; utility-type vehicle, defined.

(1) For purposes of sections 60-6,355 to 60-6,362:

(a) All-terrain vehicle means any motorized off-highway vehicle which (i) is fifty inches or less in width, (ii) has a dry weight of nine hundred pounds or less, (iii) travels on three or more low-pressure tires, (iv) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (v) has a seat or saddle designed to be straddled by the operator, and (vi) has handlebars or any other steering assembly for steering control; and

(b)(i) Utility-type vehicle means any motorized off-highway vehicle which (A) is not less than forty-eight inches nor more than seventy-four inches in width, (B) is not more than one hundred thirty-five inches, including the bumper, in length, (C) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (D) travels on four or more low-pressure tires, and (E) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.

(ii) Utility-type vehicle does not include golf carts or low-speed vehicles.

(2) All-terrain vehicles and utility-type vehicles which have been modified to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be required to be registered under the Motor Vehicle Registration Act.

Source: Laws 1987, LB 80, § 1; R.S.1943, (1988), § 60-2801; Laws 1993, LB 370, § 451; Laws 2003, LB 333, § 33; Laws 2005, LB 274, § 250; Laws 2010, LB650, § 39.
Operative date January 1, 2011.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-6,356 All-terrain vehicle; utility-type vehicle; operation; restrictions; city or village ordinance; county board resolution.

(1) An all-terrain vehicle or a utility-type vehicle shall not be operated on any controlled-access highway with more than two marked traffic lanes, and the crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted. Subsections (2), (3), and (5) through (8) of this section authorize and apply to operation of an all-terrain vehicle or a utility-type vehicle only on a highway other than a controlled-access highway with more than two marked traffic lanes.

(2) An all-terrain vehicle or a utility-type vehicle may be operated in accordance with the operating requirements of subsection (3) of this section:

(a) Outside the corporate limits of a city, village, or unincorporated village if incidental to the vehicle's use for agricultural purposes;

(b) Within the corporate limits of a city or village if authorized by the city or village by ordinance adopted in accordance with this section; or

(c) Within an unincorporated village if authorized by the county board of the county in which the unincorporated village is located by resolution in accordance with this section.

(3) An all-terrain vehicle or a utility-type vehicle may be operated as authorized in subsection (2) of this section when such operation occurs only between the hours of sunrise and sunset. Any person operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section shall have a valid Class O operator's license or a farm permit as provided in section 60-4,126, shall have liability insurance coverage for the all-terrain vehicle or a

utility-type vehicle while operating the all-terrain vehicle or a utility-type vehicle on a highway, and shall not operate such vehicle at a speed in excess of thirty miles per hour. The person operating the all-terrain vehicle or a utility-type vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of such a request. When operating an all-terrain vehicle or a utility-type vehicle as authorized in subsection (2) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

(4) All-terrain vehicles and utility-type vehicles may be operated without complying with subsection (3) of this section on highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the state.

(5) Subject to subsection (1) of this section, the crossing of a highway shall be permitted by an all-terrain vehicle or a utility-type vehicle without complying with subsection (3) of this section only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) Both the headlight and taillight of the vehicle are on when the crossing is made.

(6) All-terrain vehicles and utility-type vehicles may be operated outside the corporate limits of any municipality by electric utility personnel within the course of their employment in accordance with the operation requirements of subsection (3) of this section, except that the operation of the vehicle pursuant to this subsection need not be limited to the hours between sunrise and sunset.

(7) A city or village may adopt an ordinance authorizing the operation of all-terrain vehicles and utility-type vehicles within the corporate limits of the city or village if the operation is in accordance with subsection (3) of this section. The city or village may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within its corporate limits.

(8) A county board may adopt a resolution authorizing the operation of all-terrain vehicles and utility-type vehicles within any unincorporated village within the county if the operation is in accordance with subsection (3) of this section. The county may place other restrictions on the operation of all-terrain vehicles and utility-type vehicles within the unincorporated village.

Source: Laws 1987, LB 80, § 2; Laws 1989, LB 114, § 1; Laws 1989, LB 285, § 138; R.S.Supp.,1992, § 60-2802; Laws 1993, LB 370, § 452; Laws 2007, LB307, § 1; Laws 2010, LB650, § 40.
Operative date January 1, 2011.

60-6,357 All-terrain vehicle; utility-type vehicle; lights required; when.

Every all-terrain vehicle and utility-type vehicle shall display a lighted headlight and taillight during the period of time from sunset to sunrise and at any time when visibility is reduced due to insufficient light or unfavorable atmospheric conditions.

Source: Laws 1987, LB 80, § 3; R.S.1943, (1988), § 60-2803; Laws 1993, LB 370, § 453; Laws 1993, LB 575, § 50; Laws 2010, LB650, § 41.
Operative date January 1, 2011.

60-6,358 All-terrain vehicle; utility-type vehicle; equipment required.

Every all-terrain vehicle and utility-type vehicle shall be equipped with:

(1) A brake system maintained in good operating condition;

(2) An adequate muffler system in good working condition; and

(3) A United States Forest Service qualified spark arrester.

Source: Laws 1987, LB 80, § 4; R.S.1943, (1988), § 60-2804; Laws 1993, LB 370, § 454; Laws 2010, LB650, § 42.
Operative date January 1, 2011.

60-6,359 Modification of all-terrain vehicle or utility-type vehicle; prohibited.

No person shall:

(1) Equip the exhaust system of an all-terrain vehicle or a utility-type vehicle with a cutout, bypass, or similar device;

(2) Operate an all-terrain vehicle or a utility-type vehicle with an exhaust system so modified; or

(3) Operate an all-terrain vehicle or a utility-type vehicle with the spark arrester removed or modified except for use in closed-course competition events.

Source: Laws 1987, LB 80, § 5; R.S.1943, (1988), § 60-2805; Laws 1993, LB 370, § 455; Laws 2010, LB650, § 43.
Operative date January 1, 2011.

60-6,360 All-terrain vehicle; utility-type vehicle; competitive events; exemptions.

All-terrain vehicles and utility-type vehicles participating in competitive events may be exempted from sections 60-6,357 to 60-6,359 at the discretion of the Director of Motor Vehicles.

Source: Laws 1987, LB 80, § 6; R.S.1943, (1988), § 60-2806; Laws 1993, LB 370, § 456; Laws 2010, LB650, § 44.
Operative date January 1, 2011.

60-6,361 All-terrain vehicle; utility-type vehicle; accident; report required.

If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each

all-terrain vehicle or utility-type vehicle involved in the accident shall give notice of the accident in the same manner as provided in section 60-699.

Source: Laws 1987, LB 80, § 7; R.S.1943, (1988), § 60-2807; Laws 1993, LB 370, § 457; Laws 1993, LB 575, § 51; Laws 2010, LB650, § 45.
Operative date January 1, 2011.

(gg) SMOKE EMISSIONS AND NOISE

60-6,364 Applicability of sections.

Sections 60-6,363 to 60-6,374 shall apply to all diesel-powered motor vehicles operated within this state with the exception of the following:

(1) Emergency vehicles operated by federal, state, and local governmental authorities;

(2) Vehicles which are not required to be registered in accordance with the Motor Vehicle Registration Act;

(3) Vehicles used for research and development which have been approved by the Director of Environmental Quality;

(4) Vehicles being operated while undergoing maintenance;

(5) Vehicles operated under emergency conditions;

(6) Vehicles being operated in the course of training programs which have been approved by the director; and

(7) Other vehicles expressly exempted by the director.

Source: Laws 1972, LB 1360, § 2; R.S.1943, (1988), § 60-2202; Laws 1993, LB 370, § 460; Laws 2005, LB 274, § 251.

Cross References

Motor Vehicle Registration Act, see section 60-301.

(hh) SPECIAL RULES FOR ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

60-6,375 Electric personal assistive mobility device; exemptions from certain requirements.

An electric personal assistive mobility device, its owner, and its operator shall be exempt from the requirements of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

Source: Laws 2002, LB 1105, § 459; Laws 2005, LB 274, § 252; Laws 2005, LB 276, § 105.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

(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.

(jj) SPECIAL RULES FOR MINITRUCKS

60-6,379 Minitrucks; restrictions on use.

(1) A minitruck shall not be operated on the National System of Interstate and Defense Highways, on expressways, or on freeways.

(2) A minitruck shall be operated with its headlights and taillights on.

Source: Laws 2010, LB650, § 38.
Operative date January 1, 2011.

ARTICLE 13
WEIGHING STATIONS

Section

60-1301 Weighing stations; portable scales; purpose; location; effect as evidence of weight determination; reweighing, when required; pickup trucks; exception; Nebraska State Patrol; rules and regulations.

In order to promote public safety, to preserve and protect the state highways and bridges and prevent immoderate and destructive use of the same, and to enforce the motor vehicle registration laws, the Department of Roads shall have the responsibility to construct, maintain, provide, and contract with the Nebraska State Patrol for the operation of weighing stations and provide the funding for the same. The Nebraska State Patrol shall operate the weighing stations, including portable scales, for the weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. Each of the weighing stations shall be located near, on, or adjacent to a state highway upon real estate owned by the State of Nebraska or upon real estate acquired for that purpose. Weights determined on such weighing stations and portable scales shall be presumed to be accurate and shall be accepted in court as prima facie evidence of a violation of the laws relating to the size, weight, load, and registration of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. The owner or driver of a vehicle found to be in violation of such laws by the use of portable scales shall be advised by the officer operating the portable scale that he or she has the right to demand an immediate reweighing at his or her expense at the nearest permanent state-approved scale capable of weighing the vehicle, and if a variance exists between the weights of the permanent and portable scales, then the weights determined on the permanent scale shall prevail. Sections 60-1301 to 60-1309 shall not apply to pickup trucks with a factory-rated capacity of one ton or less, except as may be provided by rules and regulations of the Nebraska State Patrol, or to recreational vehicles as defined in section 71-4603. The Nebraska State Patrol may adopt and promulgate rules and regulations concerning the weighing of pickup trucks with a factory-rated capacity of one ton or less which tow vehicles. Such rules and regulations shall require trucks towing vehicles to comply with sections 60-1301 to 60-1309 when it is necessary to promote the public safety and preserve and protect the state highways and bridges.

Source: Laws 1949, c. 109, § 1, p. 300; Laws 1951, c. 116, § 1, p. 525; R.R.S.1943, § 39-603.03; Laws 1955, c. 145, § 1, p. 406; Laws 1961, c. 323, § 1, p. 1027; Laws 1963, c. 373, § 5, p. 1197; Laws 1976, LB 823, § 2; Laws 1985, LB 395, § 4; Laws 2002, LB 470, § 1; Laws 2008, LB797, § 2.

60-1303 Weighing stations; portable scales; operation; carrier enforcement division; rules and regulations.

(1) The Nebraska State Patrol is hereby designated as the agency to operate the weighing stations and portable scales and to perform carrier enforcement duties.

(2)(a) On and after July 20, 2002, officers of the Nebraska State Patrol appointed to operate the weighing stations and portable scales and to perform carrier enforcement duties shall be known as the carrier enforcement division. The Superintendent of Law Enforcement and Public Safety shall appoint officers of the Nebraska State Patrol to the carrier enforcement division, including officers as prescribed in sections 81-2001 to 81-2009, and carrier enforcement officers as prescribed in sections 60-1301 to 60-1309.

(b) The employees within the Nebraska State Patrol designated to operate the weighing stations and portable scales and to perform carrier enforcement duties before July 20, 2002, and not authorized to act under subdivisions (1) through (8) of section 81-2005 shall be known as carrier enforcement officers.

(3) All carrier enforcement officers shall be bonded or insured as required by section 11-201. Premiums shall be paid from the money appropriated for the construction, maintenance, and operation of the state weighing stations.

(4) All employees of the Nebraska State Patrol who are carrier enforcement officers and who are not officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 shall be members of the State Employees Retirement System of the State of Nebraska. Officers of the Nebraska State Patrol who are carrier enforcement officers on July 20, 2002, who subsequently become officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009, and who elect to remain members of the State Employees Retirement System of the State of Nebraska shall continue to participate in the State Employees Retirement System of the State of Nebraska. Carrier enforcement officers shall not receive any expense allowance as provided for by section 81-2002.

(5) The Nebraska State Patrol and the Department of Roads shall have the duty, power, and authority to contract with one another for the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties to ensure that there is adequate personnel in the carrier enforcement division to carry out the duties specified in sections 60-1301 to 60-1309. Through June 30, 2005, the number of full-time equivalent positions funded pursuant to such contract shall be limited to eighty-eight officers, including carrier enforcement officers as prescribed in sections 60-1301 to 60-1309 and officers of the Nebraska State Patrol as prescribed in sections 81-2001 to 81-2009 assigned to the carrier enforcement division. Pursuant to such contract, command of the personnel involved in such carrier enforcement operations shall be with the Nebraska State Patrol. The Department of Roads may use any funds at its disposal for its financing of such carrier enforcement activity in accordance with such contract as long as such funds are used only to finance those activities directly involved with the duties specified in sections 60-1301 to 60-1309. The Nebraska State Patrol shall account for all appropriations and expenditures related to the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties in a budget program that is distinct and separate

from budget programs used for non-carrier-enforcement-division-related activities.

(6) The Nebraska State Patrol may adopt, promulgate, and enforce rules and regulations consistent with statutory provisions related to carrier enforcement necessary for (a) the collection of fees, as outlined in sections 60-3,177 and 60-3,179 to 60-3,182 and the International Fuel Tax Agreement Act, (b) the inspection of licenses and permits required under the motor fuel laws, and (c) weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles.

Source: Laws 1955, c. 145, § 3, p. 406; Laws 1978, LB 653, § 21; Laws 1985, LB 395, § 5; Laws 1991, LB 627, § 7; Laws 1994, LB 1066, § 47; Laws 1996, LB 1218, § 15; Laws 2002, LB 470, § 2; Laws 2003, LB 408, § 2; Laws 2004, LB 884, § 32; Laws 2004, LB 983, § 2; Laws 2005, LB 274, § 253; Laws 2007, LB322, § 10.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.

60-1306 Carrier enforcement officers; powers; funding of firearms.

The carrier enforcement officers shall have the power (1) of peace officers solely for the purpose of enforcing the International Fuel Tax Agreement Act and the provisions of law relating to the size, weight, and load and the Motor Vehicle Registration Act pertaining to buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles, (2) when in uniform, to require the driver thereof to stop and exhibit his or her operator's license and registration issued for the vehicle and submit to an inspection of such vehicle, the license plates, the registration thereon, and licenses and permits required under the motor fuel laws, (3) to make arrests upon view and without warrant for any violation committed in their presence of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07, (4) to make arrests upon view and without warrant for any violation committed in their presence which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07, and (5) to make arrests on warrant for any violation which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07.

Any funds used to arm carrier enforcement officers shall be paid solely from the Carrier Enforcement Cash Fund. The amount of funds shall be determined by the Superintendent of Law Enforcement and Public Safety.

Source: Laws 1955, c. 145, § 6, p. 407; Laws 1963, c. 373, § 6, p. 1197; Laws 1983, LB 412, § 2; Laws 1985, LB 395, § 7; Laws 1986, LB 783, § 3; Laws 1991, LB 627, § 8; Laws 1994, LB 28, § 1; Laws 1996, LB 1218, § 16; Laws 2002, LB 499, § 4; Laws 2003, LB 480, § 1; Laws 2004, LB 983, § 3; Laws 2005, LB 274, § 254; Laws 2006, LB 1007, § 12.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.
Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.

60-1307 Size, weight, load, and registration violations; summons; hearing; promise to appear; violation; penalty; nonresidents, personal appearance required; motor vehicle; seizure and detention; when; release.

(1) Whenever any person is arrested at one of the state weighing stations or portable scales for a violation of the laws relating to the trip permit provided in section 66-1418, the Motor Vehicle Registration Act, or the laws relating to the size, weight, and load of buses, trucks, truck-tractors, semitrailers, trailers, or towed vehicles, the arresting officer shall take the name and address of such person and the license number of his or her motor vehicle and issue a summons or otherwise notify him or her in writing to appear at a time and place to be specified in such summons or notice, such time to be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he or she desires, have a right to an immediate hearing or a hearing within twenty-four hours at a convenient hour. The hearing shall be before a magistrate within the county in which the offense was committed. Such officer shall, upon such person giving a written promise to appear at such time and place, release him or her from custody. Such person arrested and released shall not be permitted to operate the motor vehicle concerned until it is in compliance with the Motor Vehicle Registration Act and section 60-6,301. Any person refusing to give such written promise to appear shall be immediately taken by the arresting officer before the nearest or most accessible magistrate. Any person who willfully violates a written promise to appear given in accordance with this section shall be guilty of a Class III misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(2) Subsection (1) of this section shall not apply to any person not a resident of the State of Nebraska. The arresting officer shall take such person forthwith before the nearest or most accessible magistrate.

(3)(a) The arresting officer shall seize and detain the motor vehicle concerned until the motor vehicle is in compliance with section 60-6,294 or in conformity with the exceptions permitted by section 60-6,301, and unless all the violations pending before the magistrate relating to section 60-6,294 have been the subject of a conviction, acquittal, or dismissal and all related fines and costs have been paid, the arresting officer may detain the motor vehicle concerned when the officer has reasonable grounds to believe that (i) the accused will refuse to respond to the citation, (ii) the accused has no ties to the jurisdiction reasonably sufficient to assure his or her appearance in court, or (iii) the accused has previously failed to appear in response to a citation.

(b) If a motor vehicle detained pursuant to this section is transporting livestock, procedures and precautions shall be taken if necessary to ensure the health and welfare of such livestock while the motor vehicle is detained.

(c) A motor vehicle detained pursuant to this subsection shall be released upon execution of a bond with such surety or sureties as the court deems proper or, in lieu of such surety or sureties and at the option of the accused, a cash deposit, conditioned upon his or her appearance before the proper court to answer the offense for which he or she may be charged and to appear at such times thereafter as the court so orders. Such bond shall be in an amount

as set forth in the schedule adopted pursuant to section 29-901.05 and shall be administered, subject to review and forfeiture, in the same manner as bail bonds, except that for violations of section 60-6,294, such bond or cash deposit shall be in an amount not less than the sum of costs together with the appropriate fine prescribed in section 60-6,296.

(d) In addition to the operator, any owner or lessee of the motor vehicle may execute the bond or make the cash deposit required by this section. Upon execution of the bond or cash deposit, the arresting or custodial officer shall release the motor vehicle and cargo to the person who executed the bond or deposited the cash or to the designee of such person.

(e) Towing and storage charges, if any, shall be paid by the person to whom the motor vehicle is released prior to the release of the motor vehicle. Such charges shall be assessed as costs in any action for the forfeiture of the recognizance.

(4) Nothing in this section shall (a) prevent the owner or the owner's representative of such motor vehicle or the cargo on the motor vehicle from taking possession of the cargo and transferring it to another vehicle or taking possession of the cargo and the trailer, if the trailer can be separated from the power unit, or (b) create any liability for the state arising out of damage to such motor vehicle and its cargo.

Source: Laws 1955, c. 145, § 7, p. 407; Laws 1957, c. 279, § 1, p. 1010; Laws 1963, c. 373, § 7, p. 1198; Laws 1977, LB 39, § 90; Laws 1985, LB 395, § 8; Laws 1986, LB 783, § 4; Laws 1987, LB 307, § 1; Laws 1993, LB 370, § 471; Laws 2004, LB 983, § 4; Laws 2005, LB 274, § 255.

Cross References

Motor Vehicle Registration Act, see section 60-301.

ARTICLE 14
MOTOR VEHICLE INDUSTRY LICENSING

Section

60-1401 Act, how cited; applicability of amendments.

Sections 60-1401 to 60-1440 shall be known and may be cited as the Motor Vehicle Industry Regulation Act.

Any amendments to the act shall apply to franchises subject to the act which are entered into, amended, altered, modified, renewed, or extended after the date of the amendments to the act except as otherwise specifically provided in the act.

Source: Laws 2010, LB816, § 12.
Effective date March 4, 2010.

60-1401.01 Legislative findings and declaration.

(1) The Legislature finds and declares that the distribution and sales of motor vehicles, motorcycles, and trailers in the State of Nebraska vitally affects the general economy of the state, the public interest, the public welfare, and public safety and that in order to promote the public interest and the public welfare and in the exercise of its police power, it is necessary to regulate motor vehicle, motorcycle, and trailer dealers, manufacturers, distributors, and their representatives doing business in the State of Nebraska.

(2) The Legislature further finds that the sales of motor vehicles, motorcycles, and trailers are involved to a large extent in a franchise system established between manufacturers and dealers and hereby declares that the sale of motor vehicles, motorcycles, and trailers to the public in the state under the franchise system includes more than the mere transfer of title, being a continuing obligation of the manufacturer, distributor, and dealer to the buying public affecting the public interest; that the termination or failure of the established relationship between the manufacturer, distributor, and dealer without cause or good faith denies to the general buying public its right to availability of continuing post-sale mechanical and operational services and precludes the relationship, expected and implied at the time of sale, between the buyer and the seller necessary to insure safe operating condition of the vehicle.

(3) The Legislature further finds and declares that the distribution and sale of motor vehicles in the state under the franchise system vitally affects commerce, the general economy of the state, and the welfare of the citizens of the state requiring the exercise of its police power to insure the public welfare, to regulate commerce, to establish guidelines for enforcement of a fair and equitable balance between parties to such franchises, and to provide judicial relief from unfair and inequitable practices affecting the public interest.

Source: Laws 1971, LB 768, § 1; Laws 2010, LB816, § 13.
Effective date March 4, 2010.

60-1401.02 Definitions, where found.

For purposes of the Motor Vehicle Industry Regulation Act, the definitions found in sections 60-1401.03 to 60-1401.40 apply.

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; Laws 2010, LB816, § 14.
Effective date March 4, 2010.

60-1401.03 Association, defined.

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:

(1) 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

(2) Two or more persons living in the same dwelling unit, whether or not related to each other.

Source: Laws 2010, LB816, § 15.
Effective date March 4, 2010.

60-1401.04 Auction, defined.

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 the Motor Vehicle Industry Regulation Act.

Source: Laws 2010, LB816, § 16.
Effective date March 4, 2010.

60-1401.05 Auction dealer, defined.

Auction dealer means any person engaged in the business of conducting an auction for the sale of motor vehicles and trailers.

Source: Laws 2010, LB816, § 17.
Effective date March 4, 2010.

60-1401.06 Board, defined.

Board means the Nebraska Motor Vehicle Industry Licensing Board.

Source: Laws 2010, LB816, § 18.
Effective date March 4, 2010.

60-1401.07 Bona fide consumer, defined.

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.

Source: Laws 2010, LB816, § 19.
Effective date March 4, 2010.

60-1401.08 Coerce, defined.

Coerce means to compel a dealer or manipulate a dealer to behave in an involuntary way, whether through action or inaction, by use of threats, intimidation, trickery, or some other form of pressure or force.

Source: Laws 2010, LB816, § 20.
Effective date March 4, 2010.

60-1401.09 Community, defined.

Community means a franchisee's area of responsibility as stipulated in the franchise or, if the franchise fails to designate a community, (1) the community of the franchisee is the area surrounding the location of the franchisee in a five-mile radius from the dealership if the location is within a city of the metropolitan class and (2) the community of the franchisee is the county in which the franchisee is located if the location is not within a city of the metropolitan class.

Source: Laws 2010, LB816, § 21.
Effective date March 4, 2010.

60-1401.10 Consumer care, defined.

Consumer care means the performance, for the public, of necessary maintenance and repairs to motor vehicles.

Source: Laws 2010, LB816, § 22.
Effective date March 4, 2010.

60-1401.11 Dealer's agent, defined.

Dealer's agent means a person who acts as a buying agent for one or more motor vehicle dealers, motorcycle dealers, or trailer dealers.

Source: Laws 2010, LB816, § 23.
Effective date March 4, 2010.

60-1401.12 Designated family member, defined.

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.

Source: Laws 2010, LB816, § 24.
Effective date March 4, 2010.

60-1401.13 Distributor, defined.

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.

Source: Laws 2010, LB816, § 25.
Effective date March 4, 2010.

60-1401.14 Distributor representative, defined.

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.

Source: Laws 2010, LB816, § 26.
Effective date March 4, 2010.

60-1401.15 Established place of business, defined.

(1) 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.

(2) 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.

(3) A mobile truck equipped with repair facilities to properly perform warranty functions and other repairs shall be deemed adequate repair facilities for trailers.

(4) The requirements of this section shall apply to the place of business authorized under a supplemental motor vehicle, motorcycle, or trailer dealer's license.

Source: Laws 2010, LB816, § 27.
Effective date March 4, 2010.

60-1401.16 Factory branch, defined.

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.

Source: Laws 2010, LB816, § 28.
Effective date March 4, 2010.

60-1401.17 Factory representative, defined.

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.

Source: Laws 2010, LB816, § 29.
Effective date March 4, 2010.

60-1401.18 Finance company, defined.

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.

Source: Laws 2010, LB816, § 30.
Effective date March 4, 2010.

60-1401.19 Franchise, defined.

Franchise means a contract between two or more persons when all of the following conditions are included:

(1) A commercial relationship of definite duration or continuing indefinite duration is involved;

(2) The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchisor;

(3) The franchisee, as an independent business, constitutes a component of the franchisor's distribution system;

(4) 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

(5) The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of motor vehicles, parts, and accessories.

Source: Laws 2010, LB816, § 31.
Effective date March 4, 2010.

60-1401.20 Franchisee, defined.

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.

Source: Laws 2010, LB816, § 32.
Effective date March 4, 2010.

60-1401.21 Franchisor, defined.

Franchisor means a person who manufactures or distributes motor vehicles and who may enter into a franchise.

Source: Laws 2010, LB816, § 33.
Effective date March 4, 2010.

60-1401.22 Line-make, defined.

Line-make means a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease, or distribution pursuant to a common brand name or mark, except that:

(1) Multiple brand names or marks may constitute a single line-make, but only when included in a common dealer agreement and the manufacturer, distributor, or importer offers such vehicles bearing the multiple names or marks together only, and not separately, to its authorized dealers; and

(2) Motor vehicles bearing a common brand name or mark may constitute separate line-makes when pertaining to motor vehicles subject to separate dealer agreements or when such vehicles are intended for different types of use.

Source: Laws 2010, LB816, § 34.
Effective date March 4, 2010.

60-1401.23 Manufactured home, defined.

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 section 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, 42 U.S.C. 5401 et seq., as such act existed on January 1, 2010.

Source: Laws 2010, LB816, § 35.
Effective date March 4, 2010.

60-1401.24 Manufacturer, defined.

Manufacturer means any person, resident or nonresident of this state, who is engaged in the business of distributing, manufacturing, or assembling a linemake of new motor vehicles, trailers, or motorcycles and distributes them directly or indirectly through one or more distributors to one or more new motor vehicle, trailer, or motorcycle dealers in this state and also has the same meaning as the term franchisor.

Manufacturer also includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, a manufacturer distributes its products.

Source: Laws 2010, LB816, § 36.
Effective date March 4, 2010.

60-1401.25 Motor vehicle, defined.

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.

Source: Laws 2010, LB816, § 37.
Effective date March 4, 2010.

60-1401.26 Motor vehicle dealer, defined.

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 the Motor Vehicle Industry Regulation Act.

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.

Source: Laws 2010, LB816, § 38.
Effective date March 4, 2010.

60-1401.27 Motor vehicle, motorcycle, or trailer salesperson, defined.

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.

Source: Laws 2010, LB816, § 39.
Effective date March 4, 2010.

60-1401.28 Motorcycle, defined.

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.

Source: Laws 2010, LB816, § 40.
Effective date March 4, 2010.

60-1401.29 Motorcycle dealer, defined.

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.

Source: Laws 2010, LB816, § 41.
Effective date March 4, 2010.

60-1401.30 New motor vehicle, defined.

New motor vehicle means all motor vehicles which are not included within the definition of a used motor vehicle.

Source: Laws 2010, LB816, § 42.
Effective date March 4, 2010.

60-1401.31 Person, defined.

Person means every natural person, firm, partnership, limited liability company, association, or corporation.

Source: Laws 2010, LB816, § 43.
Effective date March 4, 2010.

60-1401.32 Retail, defined.

Retail, when used to describe a sale, means a sale to any person other than a licensed dealer of any kind licensed under the Motor Vehicle Industry Regulation Act.

Source: Laws 2010, LB816, § 44.
Effective date March 4, 2010.

60-1401.33 Sale and selling, defined.

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.

Source: Laws 2010, LB816, § 45.
Effective date March 4, 2010.

60-1401.34 Scrap metal processor, defined.

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.

Source: Laws 2010, LB816, § 46.
Effective date March 4, 2010.

60-1401.35 Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer, defined.

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.

Source: Laws 2010, LB816, § 47.
Effective date March 4, 2010.

60-1401.36 Trailer, defined.

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 Motor Vehicle Industry Regulation Act.

Source: Laws 2010, LB816, § 48.
Effective date March 4, 2010.

60-1401.37 Trailer dealer, defined.

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.

Source: Laws 2010, LB816, § 49.
Effective date March 4, 2010.

60-1401.38 Used motor vehicle, defined.

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.

Source: Laws 2010, LB816, § 50.
Effective date March 4, 2010.

60-1401.39 Violator, defined.

Violator means a person acting without a license or registration as required by the Motor Vehicle Industry Regulation Act.

Source: Laws 2010, LB816, § 51.
Effective date March 4, 2010.

60-1401.40 Wrecker or salvage dealer, defined.

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.

Source: Laws 2010, LB816, § 52.
Effective date March 4, 2010.

60-1401.41 Applicability of act; persons not considered dealer.

(1) Nothing in the Motor Vehicle Industry Regulation Act shall apply to the State of Nebraska or any of its agencies or subdivisions.

(2) 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 2010, LB816, § 53.
Effective date March 4, 2010.

60-1402 Board; creation; membership; qualifications; appointment; term; per diem; traveling expenses.

(1) There is hereby established the Nebraska Motor Vehicle Industry Licensing Board which shall consist of the Director of Motor Vehicles, who shall be the chairperson of the board, and nine members appointed by the Governor as follows: One factory representative, one member of the general public, and one motorcycle dealer, all of whom shall be appointed from the state at large, one new motor vehicle dealer from each of the three congressional districts of the state as the districts are constituted on October 19, 1963, and two used motor vehicle dealers and one trailer dealer or combination motor vehicle or trailer dealer, not more than one used motor vehicle dealer being appointed from the same congressional district as they are constituted on October 19, 1963, and the trailer dealer or combination motor vehicle or trailer dealer being appointed from the state at large. No member of the board shall participate in any manner in a proceeding before the board involving his or her licensed business.

(2) On October 19, 1963, the Governor shall appoint a new motor vehicle dealer and a trailer dealer or combination motor vehicle or trailer dealer to the board. In making the appointments, the Governor shall appoint one of the new members for one year and one for two years as designated by the Governor in making the appointments. On January 1, 1972, the Governor shall appoint one factory representative and one member of the general public to the board, designating one to serve for a term of one year and one for a term of two years. On January 1, 1974, the Governor shall appoint one motorcycle dealer to serve for a term of three years. At the expiration of the term of any appointed member of the board, the Governor shall appoint a successor for a term of three years. In the event of a vacancy on the board, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. No member appointed shall serve more than two consecutive terms. The action of the majority of the members of the board shall be deemed the action of the board. All appointments made to the board, except the Director of Motor Vehicles, shall be confirmed by the Legislature if in session. In the event the Legislature is not in session all appointments including appointments to fill a vacancy shall be temporary appointments until the next meeting of the Legislature when the Governor shall nominate some person to fill the office. Any person so nominated who is confirmed by the Legislature shall hold office during the remainder of the term. No appointed person may act as a member of the board while holding any other elective or appointive state or federal office except the Director of Motor Vehicles. All appointed members of the board shall be paid fifty dollars for each day actually engaged in the performance of their duties and be entitled to their reasonable traveling expenses in the performance of their duties.

Source: Laws 1957, c. 280, § 2, p. 1014; Laws 1961, c. 282, § 2, p. 823; Laws 1963, c. 365, § 3, p. 1169; Laws 1971, LB 768, § 3; Laws 1973, LB 443, § 1; Laws 1974, LB 754, § 2; Laws 1978, LB 248, § 4; Laws 2010, LB816, § 54.
Effective date March 4, 2010.

Cross References

For current limits and designation of congressional districts, see section 32-504.

60-1403 Board; investigators; powers and duties; seal; records; authentication.

(1) The board may:

(a) Regulate the issuance and revocation of licenses in accordance with and subject to the Motor Vehicle Industry Regulation Act;

(b) Perform all acts and duties provided for in the act necessary to the administration and enforcement of the act; and

(c) Make and enforce rules and regulations relating to the administration of but not inconsistent with the act.

(2) The board shall adopt a seal, which may be either an engraved or ink stamp seal, with the words Nebraska Motor Vehicle Industry Licensing Board and such other devices as the board may desire included on the seal by which it shall authenticate the acts of its office. Copies of all records and papers in the office of the board under the hand and seal of its office shall be received in evidence in all cases equally and with like effect as the original.

(3) Investigators employed by the board may enter upon and inspect the facilities, the required records, and any vehicles, trailers, or motorcycles found in any licensed motor vehicle, motorcycle, or trailer dealer's established place or places of business.

Source: Laws 1957, c. 280, § 3, p. 1015; Laws 1967, c. 394, § 3, p. 1229; Laws 1971, LB 768, § 4; Laws 1994, LB 850, § 1; Laws 1995, LB 564, § 3; Laws 2010, LB816, § 55.
Effective date March 4, 2010.

60-1403.01 License required; restriction on issuance; exception.

(1) No person shall engage in the business as, serve in the capacity of, or act as a motor vehicle, trailer, or motorcycle dealer, wrecker or salvage dealer, salesperson, auction dealer, dealer's agent, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this state without being licensed by the board under the Motor Vehicle Industry Regulation Act. No salesperson's license shall be issued to any person under the age of sixteen, and no dealer's license shall be issued to any minor. No wrecker or salvage dealer's license shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring licensing is performed and which conforms to all local laws.

(2) A license issued under the act shall authorize the holder thereof to engage in the business or activities permitted by the license subject to the act and the rules and regulations adopted and promulgated by the board under the act.

(3) This section shall not apply to a licensed real estate salesperson or broker who negotiates for sale or sells a trailer for any individual who is the owner of not more than two trailers.

Source: Laws 1971, LB 768, § 5; Laws 1972, LB 1335, § 2; Laws 1974, LB 754, § 3; Laws 1983, LB 234, § 20; Laws 2000, LB 1018, § 2; Laws 2003, LB 498, § 2; Laws 2010, LB816, § 56.
Effective date March 4, 2010.

60-1404 Executive director; duties; meetings of board; attorney; other employees; salaries; office at capitol.

The board shall have the authority to employ an executive director who shall direct and administer the affairs of the board and who shall keep a record of all proceedings, transactions, communications, and official acts of the board. He or she shall be custodian of all records of the board and perform such other duties as the board may require. The executive director shall call a meeting of the board at the direction of the chairperson thereof or upon a written request of two or more members thereof. The executive director, with the approval of the board, is authorized to employ an attorney at a minimum salary of six hundred dollars per month together with such other employees, including staff for its attorney, as may be necessary to properly carry out the Motor Vehicle Industry Regulation Act, to fix the salaries of such employees, and to make such other expenditures as are necessary to properly carry out the act. The office of the board shall be maintained in the State Capitol at Lincoln and all files, records, and property of the board shall at all times be and remain therein. The executive director shall be the board's representative in the administration of the act, and he or she shall insure that the policies and directives of the board are carried out.

Source: Laws 1957, c. 280, § 4, p. 1016; Laws 1969, c. 515, § 2, p. 2113; Laws 1974, LB 754, § 4; Laws 1984, LB 825, § 13; Laws 2010, LB816, § 57.
Effective date March 4, 2010.

60-1405 Attorney General; attorney for board; fees and expenses.

The Attorney General shall render to the Nebraska Motor Vehicle Industry Licensing Board opinions on all questions of law relating to the interpretation of the Motor Vehicle Industry Regulation Act or arising in the administration thereof. The Attorney General shall act as attorney for the board in all actions and proceedings brought by or against it under or pursuant to any of the provisions of the act. All fees and expenses of the Attorney General for such duties shall be paid out of the Nebraska Motor Vehicle Industry Licensing Fund.

Source: Laws 1957, c. 280, § 5, p. 1016; Laws 2010, LB816, § 58.
Effective date March 4, 2010.

60-1406 Licenses; classes.

Licenses issued by the board under the Motor Vehicle Industry Regulation Act shall be of the classes set out in this section and shall permit the business activities described in this section:

(1) Motor vehicle dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used motor vehicles, trailers, and manufactured homes at the established place of business designated in the license and another place or places of business located within three hundred feet of the designated place of business and within the city or county described in the original license. This license permits the sale of a trade-in or consignment mobile home greater than forty feet in length and eight feet in width and located at a place other than the dealer's established place of business. This license permits one person, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motor vehicle, trailer, and manufactured

home salesperson and the name of the authorized person shall appear on the license;

(2) Motor vehicle, motorcycle, or trailer salesperson license. This license permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer salesperson. This license permits the one person named on the license to act as a salesperson;

(3) Manufacturer license. This license permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer manufacturer or manufacturer's factory branch;

(4) Distributor license. This license permits the licensee to engage in the activities of a motor vehicle, motorcycle, or trailer distributor;

(5) Factory representative license. This license permits the licensee to engage in the activities of a factory branch representative;

(6) Factory branch license. This license permits the licensee to maintain a branch office in this state;

(7) Distributor representative license. This license permits the licensee to engage in the activities of a distributor representative;

(8) Finance company license. This license permits the licensee to engage in the activities of repossession of motor vehicles or trailers and the sale of such motor vehicles or trailers so repossessed;

(9) Wrecker or salvage dealer license. This license permits the licensee to engage in the business of acquiring motor vehicles or trailers for the purpose of dismantling the motor vehicles or trailers and selling or otherwise disposing of the parts and accessories of motor vehicles or trailers;

(10) Supplemental motor vehicle, motorcycle, or trailer dealer's license. This license permits the licensee to engage in the business of selling or exchanging motor vehicles, motorcycles, or trailers of the type designated in his or her dealer's license at a specified place of business which is located more than three hundred feet from any part of the place of business designated in the original motor vehicle, motorcycle, or trailer dealer's license but which is located within the city or county described in such original license;

(11) Motorcycle dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used motorcycles at the established place of business designated in the license and another place or places of business located within three hundred feet of the designated place of business and within the city or county described in the original license. This form of license permits one person named on the license, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motorcycle salesperson and the name of the authorized person shall appear on the license;

(12) Motor vehicle auction dealer's license. This license permits the licensee to engage in the business of selling motor vehicles and trailers. This form of license permits one person named on the license, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a motor vehicle auction dealer's salesperson and the name of the authorized person shall appear on the license;

(13) Trailer dealer's license. This license permits the licensee to engage in the business of selling or exchanging new, used, or new and used trailers and manufactured homes at the established place of business designated in the

license and another place or places of business located within three hundred feet of the designated place of business and within the city or county described in the original license. This form of license permits one person named on the license, either the licensee, if he or she is the individual owner of the licensed business, or a stockholder, officer, partner, or member of the licensee, to act as a trailer and manufactured home salesperson and the name of the authorized person shall appear on the license; and

(14) Dealer's agent license. This license permits the licensee to act as the buying agent for one or more licensed motor vehicle dealers, motorcycle dealers, or trailer dealers. The agent shall act in accordance with a written contract and file a copy of the contract with the board. The dealer shall be bound by and liable for the actions of the agent. The dealer's agent shall disclose in writing to each dealer with which the agent contracts as an agent the names of all other dealers contracting with the agent. The agent shall make each purchase on behalf of and in the name of only one dealer and may purchase for dealers only at auctions and only from licensed dealers. The agent shall not act as a licensed dealer and is not authorized to sell any vehicle pursuant to this license.

Source: Laws 1957, c. 280, § 6, p. 1016; Laws 1961, c. 307, § 8, p. 977; Laws 1963, c. 365, § 4, p. 1170; Laws 1967, c. 394, § 4, p. 1229; Laws 1971, LB 768, § 6; Laws 1972, LB 1335, § 3; Laws 1974, LB 754, § 5; Laws 1978, LB 248, § 5; Laws 1984, LB 825, § 14; Laws 1993, LB 121, § 389; Laws 1995, LB 564, § 4; Laws 1999, LB 632, § 1; Laws 2000, LB 1018, § 4; Laws 2003, LB 498, § 3; Laws 2010, LB816, § 59.
Effective date March 4, 2010.

60-1407 Application for license; contents.

Any person desiring to apply for one or more of the types of licenses described in the Motor Vehicle Industry Regulation Act shall submit to the board, in writing, the following required information:

(1) The name and address of the applicant, if the applicant is an individual, his or her social security number, and the name under which he or she intends to conduct business. If the applicant is a partnership or limited liability company, it shall set forth the name and address of each partner or member thereof and the name under which the business is to be conducted. If the applicant is a corporation, it shall set forth the name of the corporation and the name and address of each of its principal officers;

(2) The place or places, including the city or village and the street and street number, if any, where the business is to be conducted or the salesperson employed;

(3) If the application is for a motor vehicle dealer's license, trailer dealer's license, or motorcycle dealer's license (a) the name or names of the new motor vehicle or vehicles, new trailer or trailers, or new motorcycle or motorcycles which the applicant has been enfranchised to sell or exchange, (b) the name or names and address or addresses of the manufacturer or distributor who has enfranchised the applicant, (c) a current copy of each existing franchise, and (d) a description of the community;

(4) If the application is for any of the above-named classes of dealer's licenses, the name and address of the person who is to act as a motor vehicle, trailer, or motorcycle salesperson under such license if issued;

(5) If the application is for a dealer's agent, the dealers for which the agent will be buying;

(6) A description of the proposed place or places of business proposed to be operated in the event a license is granted together with (a) a statement whether the applicant owns or leases the proposed established place of business and, if the proposed established place of business is leased, the applicant shall file a true and correct copy of the lease agreement, and (b) a description of the facilities for the display of motor vehicles, trailers, and motorcycles;

(7) If the application is for a manufacturer's license, a statement regarding the manufacturer's compliance with the Motor Vehicle Industry Regulation Act; and

(8) A statement that the licensee will comply with and be subject to the act, the rules and regulations adopted and promulgated by the board, and any amendments to the act and the rules and regulations existing on the date of application.

Subdivision (3)(d) of this section shall not be construed to require any licensee who has a franchise on August 31, 2003, to show good cause to be in the same community as any other licensee who has a franchise of the same line-make in the same community on August 31, 2003.

Source: Laws 1957, c. 280, § 7, p. 1017; Laws 1959, c. 286, § 9, p. 1087; Laws 1963, c. 365, § 5, p. 1172; Laws 1967, c. 394, § 5, p. 1231; Laws 1971, LB 768, § 7; Laws 1972, LB 1335, § 4; Laws 1993, LB 121, § 390; Laws 1997, LB 752, § 146; Laws 2003, LB 182, § 1; Laws 2003, LB 498, § 4; Laws 2010, LB816, § 60.
Effective date March 4, 2010.

60-1407.01 License; application; filing; investigation; report; contents; requirements; revocation of license; when.

(1) Upon the filing of any application, a staff member of the board shall endorse on it the date of filing. If no patent disqualification of the applicant is disclosed or if no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the chairperson of the board or executive director shall refer the application to a staff member for investigation and report. The report shall include:

(a) A statement as to whether or not the applicant or any person holding any financial interest in the applicant is for any reason disqualified by the Motor Vehicle Industry Regulation Act from obtaining or exercising a license and whether or not the applicant has complied with all the requirements of the act relative to the making and filing of his or her application;

(b) Information relating to any and all other matters and things which in the judgment of the staff member pertain to or affect the matter of the application or the issuance or exercise of the license applied for; and

(c) In the case of an application for a dealer's license:

(i) A description of the premises intended to become the licensed premises and of the equipment and surrounding conditions;

(ii) If the applicant has held a prior dealer's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license; and

(iii) If the applicant proposes to engage in the business of selling new motor vehicles, motorcycles, or trailers, a written statement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or such other evidence as prescribed by the board, that the applicant is authorized to sell or distribute such new motor vehicles, motorcycles, or trailers.

(2) After the filing of the report, the board may interview the applicant. Notice of such interview shall be given at least ten days prior to the interview.

(3) The executive director shall not issue or renew a license if the applicant or licensee does not (a) maintain an established place of business, (b) meet the requirement for a bond pursuant to section 60-1419, (c) present a certificate or policy of insurance written by an insurance carrier duly authorized to do business in this state which gives the effective dates of coverage indicating that it is in force, which covers the fleet of motor vehicles owned by the applicant or licensee in the ordinary course of business, and which provides liability coverage as described in sections 60-534 and 60-538, (d) present evidence of compliance with the insurance requirements of the Nebraska Workers' Compensation Act, and (e) meet requirements for licensure and comply with the Motor Vehicle Industry Regulation Act, the rules and regulations adopted and promulgated by the board, and any amendments to the act and the rules and regulations. The executive director shall refuse to renew a motor vehicle dealer's license if the dealer cannot prove that he or she sold at least five motor vehicles during the previous licensing period. The requirement under subdivision (c) of this subsection for a certificate or policy of insurance shall not apply to trailer dealers.

(4) The board shall revoke the license of any licensee if, after December 31, 1991, it comes to the attention of the board that the policy of motor vehicle liability coverage required under subdivision (3)(c) of this section is no longer in force.

(5) Nothing in this section shall be construed to change any existing liability or to create any new liability.

Source: Laws 1971, LB 768, § 8; Laws 1984, LB 825, § 15; Laws 1989, LB 280, § 2; Laws 1991, LB 171, § 1; Laws 1999, LB 632, § 2; Laws 2010, LB816, § 61.
Effective date March 4, 2010.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

60-1407.02 Sales tax permit; authorized use; violations; penalty.

It shall be unlawful for any person holding a Nebraska sales tax permit, except a dealer licensed pursuant to the Motor Vehicle Industry Regulation Act, to sell or offer for sale any motor vehicle, motorcycle, or trailer, not owned by

such person, on the premises covered by such sales tax permit. Any person violating this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1972, LB 1335, § 15; Laws 1977, LB 39, § 93; Laws 2010, LB816, § 62.
Effective date March 4, 2010.

60-1407.03 Special permit for sale at other than established place of business; issuance.

Notwithstanding the other provisions of the Motor Vehicle Industry Regulation Act restricting sales to an established place of business, any motor vehicle, motorcycle, or trailer dealer licensed in accordance with the act may be granted a special permit to display and sell passenger cars, motor vehicles, motorcycles, trailers, or self-propelled motor homes at fairs, sports shows, vacation shows, and similar events, subject to the conditions established by sections 60-1407.02 to 60-1407.04.

Source: Laws 1972, LB 1335, § 16; Laws 1974, LB 754, § 6; Laws 1981, LB 361, § 2; Laws 2000, LB 1018, § 5; Laws 2010, LB816, § 63.
Effective date March 4, 2010.

60-1407.04 Special permit for sale at other than established place of business; approval; conditions.

The event for which a permit is sought under section 60-1407.03 must be approved by the board. In determining approval, the board shall consider the size, location, duration, sponsors, and purpose of the event. Approval shall not be given to any event sponsored solely by a dealer or dealers or for which the sole or primary purpose is the sale of motor vehicles, motorcycles, trailers, or self-propelled mobile homes.

Source: Laws 1972, LB 1335, § 17; Laws 2010, LB816, § 64.
Effective date March 4, 2010.

60-1409 Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.

The Nebraska Motor Vehicle Industry Licensing Fund is created. All fees collected under the Motor Vehicle Industry Regulation Act shall be remitted by the board, as collected, to the State Treasurer for credit to the fund. Such fund shall be appropriated by the Legislature for the operations of the Nebraska Motor Vehicle Industry Licensing Board and shall be paid out from time to time by warrants of the Director of Administrative Services on the State Treasurer for authorized expenditures upon duly itemized vouchers executed as provided by law and approved by the chairperson of the board or the executive secretary, except that transfers from the fund to the General Fund may be made at the direction of the Legislature through June 30, 2011. The expenses of conducting the office must always be kept within the income collected and reported to the State Treasurer by such board. Such office and expense thereof shall not be supported or paid from the General Fund, and all money deposited in the Nebraska Motor Vehicle Industry Licensing Fund shall be expended only for such office and expense thereof and, unless determined by the board, it shall not be required to expend any funds to any person or any other governmental agency.

Any money in the Nebraska Motor Vehicle Industry Licensing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund shall be audited annually by the Auditor of Public Accounts.

Source: Laws 1957, c. 280, § 9, p. 1019; Laws 1969, c. 584, § 60, p. 2382; Laws 1972, LB 1335, § 5; Laws 1974, LB 754, § 8; Laws 1978, LB 248, § 6; Laws 1995, LB 7, § 63; Laws 2002, LB 1310, § 6; Laws 2009, First Spec. Sess., LB3, § 36; Laws 2010, LB816, § 65. Effective date March 4, 2010.

Cross References

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

60-1411.01 Administration and enforcement expenses; how paid; fees; licenses; expiration.

(1) To pay the expenses of the administration, operation, maintenance, and enforcement of the Motor Vehicle Industry Regulation Act, the board shall collect with each application for each class of license fees not exceeding the following amounts:

(a) Motor vehicle dealer's license, four hundred dollars;

(b) Supplemental motor vehicle dealer's license, twenty dollars;

(c) Motor vehicle or motorcycle salesperson's license, twenty dollars;

(d) Dealer's agent license, one hundred dollars;

(e) Motor vehicle, motorcycle, or trailer manufacturer's license, six hundred dollars;

(f) Distributor's license, six hundred dollars;

(g) Factory representative's license, twenty dollars;

(h) Distributor representative's license, twenty dollars;

(i) Finance company's license, four hundred dollars;

(j) Wrecker or salvage dealer's license, two hundred dollars;

(k) Factory branch license, two hundred dollars;

(l) Motorcycle dealer's license, four hundred dollars;

(m) Motor vehicle auction dealer's license, four hundred dollars; and

(n) Trailer dealer's license, four hundred dollars.

(2) The fees shall be fixed by the board and shall not exceed the amount actually necessary to sustain the administration, operation, maintenance, and enforcement of the act.

(3) Such licenses, if issued, shall expire on December 31 next following the date of the issuance thereof. Any motor vehicle, motorcycle, or trailer dealer changing its location shall not be required to obtain a new license if the new location is within the same city limits or county, all requirements of law are complied with, and a fee of twenty-five dollars is paid, but any change of ownership of any licensee shall require a new application for a license and a new license. Change of name of licensee without change of ownership shall require the licensee to obtain a new license and pay a fee of five dollars. Applications shall be made each year for a new or renewal license. If the

applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1971, LB 768, § 11; Laws 1972, LB 1335, § 8; Laws 1974, LB 754, § 9; Laws 1978, LB 248, § 7; Laws 1984, LB 825, § 16; Laws 1997, LB 752, § 147; Laws 1998, LB 903, § 4; Laws 1999, LB 632, § 3; Laws 2003, LB 498, § 7; Laws 2007, LB681, § 1; Laws 2010, LB816, § 66.
Effective date March 4, 2010.

60-1411.02 Investigation; denial of application; revocation or suspension of license; probation; administrative fine; grounds.

The board may, upon its own motion, and shall, upon a sworn complaint in writing of any person, investigate the actions of any person acting, registered, or licensed under the Motor Vehicle Industry Regulation Act as a motor vehicle dealer, trailer dealer, motor vehicle or trailer salesperson, dealer's agent, manufacturer, factory branch, distributor, factory representative, distributor representative, supplemental motor vehicle dealer, wrecker or salvage dealer, finance company, motorcycle dealer, or motor vehicle auction dealer or operating without a registration or license when such registration or license is required. The board may deny any application for a license, may revoke or suspend a license, may place the licensee or registrant on probation, may assess an administrative fine in an amount not to exceed five thousand dollars per violation, or may take any combination of such actions if the violator, applicant, registrant, or licensee including any officer, stockholder, partner, or limited liability company member or any person having any financial interest in the violator, applicant, registrant, or licensee:

(1) Has had any license issued under the act revoked or suspended and, if the license has been suspended, has not complied with the terms of suspension;

(2) Has knowingly purchased, sold, or done business in stolen motor vehicles, motorcycles, or trailers or parts therefor;

(3) Has failed to provide and maintain an established place of business;

(4) Has been found guilty of any felony which has not been pardoned, has been found guilty of any misdemeanor concerning fraud or conversion, or has suffered any judgment in any civil action involving fraud, misrepresentation, or conversion. In the event felony charges are pending against an applicant, the board may refuse to issue a license to the applicant until there has been a final determination of the charges;

(5) Has made a false material statement in his or her application or any data attached to the application or to any investigator or employee of the board;

(6) Has willfully failed to perform any written agreement with any consumer or retail buyer;

(7) Has made a fraudulent sale, transaction, or repossession, or created a fraudulent security interest as defined in the Uniform Commercial Code, in a motor vehicle, trailer, or motorcycle;

(8) Has failed to notify the board of a change in the location of his or her established place or places of business and in the case of a salesperson has failed to notify the board of any change in his or her employment;

(9) Has willfully failed to deliver to a purchaser a proper certificate of ownership for a motor vehicle, trailer, or motorcycle sold by the licensee or to

refund the full purchase price if the purchaser cannot legally obtain proper certification of ownership within thirty days;

(10) Has forged the signature of the registered or legal owner on a certificate of title;

(11) Has failed to comply with the act and any orders, rules, or regulations of the board adopted and promulgated under the act;

(12) Has failed to comply with the advertising and selling standards established in section 60-1411.03;

(13) Has failed to comply with any provisions of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Industry Regulation Act, the Motor Vehicle Registration Act, or the rules or regulations adopted and promulgated by the board pursuant to the Motor Vehicle Industry Regulation Act;

(14) Has failed to comply with any provision of Chapter 71, article 46, or with any code, standard, rule, or regulation adopted or made under the authority of or pursuant to Chapter 71, article 46;

(15) Has willfully defrauded any retail buyer or other person in the conduct of the licensee's business;

(16) Has employed any unlicensed salesperson or salespersons;

(17) Has failed to comply with sections 60-190 to 60-196;

(18) Has engaged in any unfair methods of competition or unfair or deceptive acts or practices prohibited under the Uniform Deceptive Trade Practices Act;

(19) Has conspired, as defined in section 28-202, with other persons to process certificates of title in violation of the Motor Vehicle Certificate of Title Act; or

(20) Has violated the Guaranteed Asset Protection Waiver Act.

If the violator, applicant, registrant, or licensee is a publicly held corporation, the board's authority shall extend only to the corporation and its managing officers and directors.

Source: Laws 1971, LB 768, § 12; Laws 1972, LB 1335, § 9; Laws 1974, LB 754, § 10; Laws 1978, LB 248, § 8; Laws 1980, LB 820, § 2; Laws 1984, LB 825, § 17; Laws 1991, LB 47, § 6; Laws 1993, LB 106, § 1; Laws 1993, LB 121, § 391; Laws 1993, LB 370, § 472; Laws 1994, LB 884, § 82; Laws 1995, LB 564, § 5; Laws 1999, LB 632, § 4; Laws 2003, LB 498, § 8; Laws 2005, LB 274, § 257; Laws 2005, LB 276, § 106; Laws 2010, LB571, § 12; Laws 2010, LB816, § 67.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB571, section 12, with LB816, section 67, to reflect all amendments.

Note: Changes made by LB816 became effective March 4, 2010. Changes made by LB571 became effective July 15, 2010.

Cross References

Guaranteed Asset Protection Waiver Act, see section 45-1101.
Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Registration Act, see section 60-301.
Uniform Deceptive Trade Practices Act, see section 87-306.

60-1411.03 Unauthorized acts.

It shall be unlawful for any licensee or motor vehicle dealer to engage, directly or indirectly, in the following acts:

(1) To advertise and offer any year, make, engine size, model, type, equipment, price, trade-in allowance, or terms or make other claims or conditions pertaining to the sale, leasing, or rental of motor vehicles, motorcycles, and trailers which are not truthful and clearly set forth;

(2) To advertise for sale, lease, or rental a specific motor vehicle, motorcycle, or trailer which is not in the possession of the dealer, owner, or advertiser and willingly shown and sold, as advertised, illustrated, or described, at the advertised price and terms, at the advertised address. Unless otherwise specified, a motor vehicle, motorcycle, or trailer advertised for sale shall be in operable condition and, on request, the advertiser thereof shall show records to substantiate an advertised offer;

(3) To advertise a new motor vehicle, motorcycle, or trailer at a price which does not include standard equipment with which it is fitted or is ordinarily fitted, without disclosing such fact, or eliminating any such equipment for the purpose of advertising a low price;

(4) To advertise (a) that the advertiser's prices are always or generally lower than competitive prices and not met or equalled by others or that the advertiser always or generally undersells competitors, (b) that the advertiser's prices are always or generally the lowest or that no other dealer has lower prices, (c) that the advertiser is never undersold, or (d) that no other advertiser or dealer will have a lower price;

(5) To advertise and make statements such as, Write Your Own Deal, Name Your Own Price, or Name Your Own Monthly Payments and other statements of a similar nature;

(6) To advertise by making disparaging comparisons with competitors' services, quality, price, products, or business methods;

(7) To advertise by making the layout, headlines, illustrations, and type size of an advertisement so as to convey or permit an erroneous impression as to which motor vehicle, motorcycle, or trailer or motor vehicles, motorcycles, or trailers are offered at featured prices. No advertised offer, expression, or display of price, terms, downpayment, trade-in allowance, cash difference, or savings shall be misleading by itself, and any qualification to such offer, expression, or display shall be clearly and conspicuously set forth in comparative type size and style, location, and layout to prevent deception;

(8) To advertise the price of a motor vehicle, motorcycle, or trailer without including all charges which the customer must pay for the motor vehicle, motorcycle, or trailer, excepting state and local taxes and license, title, and other fees. It shall be unlawful to advertise prices described as unpaid balance unless they are the full cash selling price and to advertise price which is not the full selling price even though qualified with expressions such as with trade, with acceptable trade, or other similar words;

(9) To advertise as at cost, below cost, below invoice, or wholesale, unless the term used is strictly construed that the word cost as used in this subdivision or in a similar meaning is the actual price paid by the advertiser to the manufacturer for the motor vehicle, motorcycle, or trailer so advertised;

(10) To advertise claims that Everybody Financed, No Credit Rejected, or We Finance Anyone and other similar affirmative statements;

(11) To advertise a specific trade-in amount or range of amounts;

(12) To advertise the words Finance, Loan, or Discounts or others of similar import in the firm name or trade style of a person offering motor vehicles, motorcycles, and trailers for sale unless such person is actually engaged in the finance business and offering only bona fide repossessed motor vehicles, motorcycles, and trailers. It shall be unlawful to use the word Repossessed in the name or trade style of a firm in the advertising of motor vehicles, motorcycles, and trailers sold by such a company unless they are bona fide repossessions sold for unpaid balances due only. Advertisers offering repossessed automobiles for sale shall be able to offer proof of repossession;

(13) To advertise the term Authorized Dealer in any way as to mislead as to the make or makes of motor vehicles, motorcycles, or trailers for which a dealer is franchised to sell at retail;

(14) To advertise or sell new motor vehicles, motorcycles, and trailers by any person not enfranchised by the manufacturer of the motor vehicle, motorcycle, or trailer offered without disclosing the fact in each advertisement which includes the motor vehicle, motorcycle, or trailer, and in writing in the lease or purchase agreement that the licensee or motor vehicle dealer is not enfranchised by the manufacturer for service under factory warranty provisions. No person shall transfer ownership of a motor vehicle by reassignment on a manufacturer's statement of origin unless the person is enfranchised to do so by the manufacturer of the motor vehicle;

(15) To advertise used motor vehicles, motorcycles, or trailers so as to create the impression that they are new. Used motor vehicles, motorcycles, and trailers of the current and preceding model year shall be clearly identified as Used, Executive Driven, Demonstrator, or Driver Training, and lease cars, taxicabs, fleet vehicles, police motor vehicles, or motorcycles as may be the case and descriptions such as Low Mileage or Slightly Driven may also be applied only when correct. The terms demonstrator's, executive's, and official's motor vehicles, motorcycles, or trailers shall not be used unless (a) they have never been sold to a member of the public, (b) such terms describe motor vehicles, motorcycles, or trailers used by new motor vehicle, motorcycle, or trailer dealers or their employees for demonstrating performance ability, and (c) such vehicles are advertised for sale as such only by an authorized dealer in the same make of motor vehicle, motorcycle, or trailer. Phrases such as Last of the Remaining, Closeout, or Final Clearance and others of similar import shall not be used in advertising used motor vehicles, motorcycles, and trailers so as to convey the impression that the motor vehicles, motorcycles, and trailers offered are holdover new motor vehicles, motorcycles, and trailers. When new and used motor vehicles, motorcycles, and trailers of the current and preceding model year are offered in the same advertisement, such offers shall be clearly separated by description, layout, and art treatment;

(16) To advertise executives' or officials' motor vehicles, motorcycles, or trailers unless they have been used exclusively by the personnel or executive of the motor vehicle, motorcycle, or trailer manufacturer or by an executive of any authorized dealer of the same make thereof and such motor vehicles, motorcycles, and trailers have not been sold to a member of the public prior to the appearance of the advertisement;

(17) To advertise motor vehicles, motorcycles, and trailers owned by or in the possession of dealers without the name of the dealership or in any other

manner so as to convey the impression that they are being offered by private parties;

(18) To advertise the term wholesale in connection with the retail offering of used motor vehicles, motorcycles, and trailers;

(19) To advertise the terms auction or auction special and other terms of similar import unless such terms are used in connection with motor vehicles, motorcycles, and trailers offered or sold at a bona fide auction to the highest bidder and under such other specific conditions as may be required in the Motor Vehicle Industry Regulation Act;

(20) To advertise free driving trial unless it means a trial without obligation of any kind and that the motor vehicle, motorcycle, or trailer may be returned in the period specified without obligation or cost. A driving trial advertised on a money back basis or with privilege of exchange or applying money paid on another motor vehicle, motorcycle, or trailer shall be so explained. Terms and conditions of driving trials, free or otherwise, shall be set forth in writing for the customer;

(21) To advertise (a) the term Manufacturer's Warranty unless it is used in advertising only in reference to cars covered by a bona fide factory warranty for that particular make of motor vehicle, motorcycle, or trailer. In the event only a portion of such warranty is remaining, then reference to a warranty may be used only if stated that that unused portion of the warranty is still in effect, (b) the term New Car Guarantee except in connection with new motor vehicles, motorcycles, and trailers, and (c) the terms Ninety-day Warranty, Fifty-fifty Guarantee, Three-hundred-mile Guarantee, and Six-month Warranty, unless the major terms and exclusions are sufficiently described in the advertisement;

(22) To advertise representations inconsistent with or contrary to the fact that a motor vehicle, motorcycle, or trailer is sold as is and without a guarantee. The customer contract shall clearly indicate when a car will be sold with a guarantee and what that guarantee is and similarly shall clearly indicate when a car is sold as is and without a guarantee; and

(23) To advertise or to make any statement, declaration, or representation in any advertisement that cannot be substantiated in fact, and the burden of proof of the factual basis for the statement, declaration, or representation shall be on the licensee or motor vehicle dealer and not on the board.

Source: Laws 1971, LB 768, § 13; Laws 1972, LB 1335, § 10; Laws 1974, LB 754, § 11; Laws 1980, LB 820, § 3; Laws 1984, LB 825, § 18; Laws 1989, LB 280, § 3; Laws 1995, LB 564, § 6; Laws 1997, LB 271, § 33; Laws 2010, LB816, § 68.
Effective date March 4, 2010.

60-1415 Disciplinary actions; findings of board; order; restitution; appeal; distribution of fines.

(1) The board shall state in writing, officially signed by the chairperson or vice-chairperson and the executive director, its findings and determination after such hearing and its order in the matter. If the board determines and orders that an applicant is not qualified to receive a license or registration, no license or registration shall be granted. If the board determines that the party has willfully or through undue negligence been guilty of any violation of the Motor Vehicle Industry Regulation Act or any rule or regulation adopted and promul-

gated by the board under authority of the act, the board may suspend or revoke the license or registration, place the party on probation, assess an administrative fine, or take any combination of such actions. In determining the amount of the fine, the board may consider the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and any attempt made by the party to retaliate against another party for seeking relief pursuant to the laws, rules, or regulations relating to motor vehicle industry licensing. The board may also, after hearing, assess an additional administrative fine in an amount not to exceed five thousand dollars for each day a violation continues if a party fails to obey a direct order of the board or repeats the same violation within forty-eight months of the previous violation. The imposition of any such additional administrative fine shall commence one month after the initial order of the board or any final order on appeal if taken for failure to obey a direct order of the board and on the date of the second or subsequent violation for repeat violations within forty-eight months. The board may make a demand on a violator for restitution to a harmed consumer. The party may appeal the decision of the board. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The board shall remit administrative fines to the State Treasurer on a monthly basis for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Any administrative fine imposed under this section and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the State of Nebraska, in the district court of the county in which the violator resides or owns property.

Source: Laws 1957, c. 280, § 15, p. 1023; Laws 1963, c. 365, § 11, p. 1178; Laws 1967, c. 394, § 9, p. 1236; Laws 1971, LB 768, § 17; Laws 1972, LB 1335, § 12; Laws 1974, LB 754, § 12; Laws 1978, LB 248, § 10; Laws 1984, LB 825, § 25; Laws 1988, LB 352, § 107; Laws 1993, LB 106, § 3; Laws 2010, LB816, § 69. Effective date March 4, 2010.

Cross References

Administrative Procedure Act, see section 84-920.

60-1415.01 Restraining order.

Whenever the board shall believe from evidence satisfactory to it that any person has violated or is violating any provisions of the Motor Vehicle Industry Regulation Act, the board may, in addition to any other remedy, bring an action in the name and on behalf of the State of Nebraska against such person and any other person concerned in or in any way participating in or about to participate in practices or acts in violation of the act to enjoin such person and such other person from continuing the same. In any such action, the board may apply for and on due showing be entitled to have issued the court's subpoena, requiring forthwith the appearance of any defendant and the defendant's agent and employees and the production of documents, books, and records as may appear necessary for the hearing of such petition to testify and give evidence concerning the acts or conduct of practices or things complained of in such application

for injunction. In such action an order or judgment may be entered awarding such preliminary or final injunctions as may be proper.

Source: Laws 1971, LB 768, § 18; Laws 2010, LB816, § 70.
Effective date March 4, 2010.

60-1417 Vehicle sale; instrument in writing; contents; copy of instruments and odometer statements retained by dealer; out-of-state sale; requirements.

Every motor vehicle, motorcycle, or trailer sale, except between a manufacturer or distributor, shall be evidenced by an instrument in writing upon a form that may be adopted and promulgated by the board and approved by the Attorney General which shall contain all the agreements of the parties and shall be signed by the buyer and seller or a duly acknowledged agent of the seller. Prior to or concurrent with any such motor vehicle, motorcycle, or trailer sale, the seller shall deliver to the buyer written documentation which shall contain the following information:

(1) Name of seller;

(2) Name of buyer;

(3) Year of model and identification number;

(4) Cash sale price;

(5) Year and model of trailer and serial number, if any;

(6) The amount of buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of any goods traded in;

(7) The difference between subdivisions (4) and (6) of this section;

(8) The amount included for insurance if a separate charge is made for insurance, specifying the types of coverages;

(9) If the sale is an installment sale:

(a) The basic time price, which is the sum of subdivisions (7) and (8) of this section;

(b) The time-price differential;

(c) The amount of the time-price balance, which is the sum of subdivisions (a) and (b) of this subdivision, payable in installments by the buyer to the seller;

(d) The number, amount, and due date or period of each installment payment; and

(e) The time-sales price;

(10) Whether the sale is as is or subject to warranty and, if subject to warranty, specifying the warranty; and

(11) If repairs or inspections arising out of the conduct of a dealer's business cannot be provided by the dealer in any representations or warranties that may arise, the instrument shall so state that fact and shall provide the purchaser with the location of a facility where such repairs or inspections, as provided for in the service contract, can be accomplished.

A copy of all such instruments and written documentation shall be retained in the file of the dealer for five years from the date of sale. The dealer shall keep a copy of the odometer statement required by section 60-192 which is furnished to him or her for each motor vehicle the dealer purchases or sells. The dealer

shall keep such statements for five years from the date of the transaction as shown on the odometer statement.

If a transaction for the sale of a new motor vehicle which does not take place in the State of Nebraska provides for delivery in Nebraska, delivery in Nebraska shall only be made through a motor vehicle dealer licensed and bonded in Nebraska. The motor vehicle dealer may charge the seller for such service but shall not charge the purchaser. The motor vehicle dealer shall be jointly and severally liable for compliance with all applicable laws and contracts with the seller. If the dealer is not a franchisee of the manufacturer or distributor of the line-make of the vehicle, the dealer shall notify the purchaser in writing that the dealer is jointly and severally liable with the seller for compliance with all applicable laws and contracts with the seller and that the dealer is not authorized to provide repairs or inspections pursuant to the manufacturer's warranty.

Source: Laws 1945, c. 143, § 9, p. 463; Laws 1953, c. 207, § 13, p. 730; Laws 1955, c. 243, § 7, p. 767; R.R.S.1943, § 60-617; Laws 1963, c. 365, § 13, p. 1179; Laws 1967, c. 394, § 10, p. 1237; Laws 1971, LB 768, § 36; Laws 1974, LB 754, § 14; Laws 1978, LB 248, § 11; Laws 1984, LB 825, § 27; Laws 1993, LB 370, § 473; Laws 1995, LB 564, § 9; Laws 2000, LB 1018, § 6; Laws 2005, LB 276, § 107.

60-1417.02 Auction; registration of seller.

(1) Any person who engages in or attempts to engage in the selling of motor vehicles or trailers at an auction licensed pursuant to the Motor Vehicle Industry Regulation Act shall register to do so. Registration shall be made on a form provided by the auction dealer and approved by the board. A copy of the registration shall serve as proof of registration for the calendar year. The registration information shall be made available and accessible to the board by the auction dealer within seventy-two hours after the registrant has met the registration requirements and such registration is issued. Such registration information shall be maintained and made accessible to the board by the auction dealer for two years. It shall be the duty of the auction dealer to ensure that no seller participates in any sales activities until and unless registration has been received by the auction dealer or unless such seller is otherwise licensed under the act.

(2) The information required on the registration form shall include, but not be limited to, the following: (a) The legal name of the registrant; (b) the registrant's current mailing address and telephone number; (c) the business name and address of the person with whom the registrant is associated; and (d) whether or not the registrant is bonded.

(3) The registration form shall be signed by the registrant and an authorized representative of the auction and shall be notarized by a notary public.

(4) Any person who is convicted of any violation of the act pursuant to section 60-1411.02 may be denied the right to be registered at all licensed auctions of this state following a hearing before the board as prescribed in section 60-1413.

Source: Laws 1984, LB 825, § 29; Laws 1999, LB 340, § 2; Laws 2010, LB816, § 71.
Effective date March 4, 2010.

60-1419 Dealer's licenses; bond; conditions.

(1) Applicants for a motor vehicle dealer's license, trailer dealer's license, or motorcycle dealer's license shall furnish, at the time of making application, a corporate surety bond in the penal sum of fifty thousand dollars.

(2) Applicants for a motor vehicle auction dealer's license shall, at the time of making application, furnish a corporate surety bond in the penal sum of not less than one hundred thousand dollars. The bond shall be on a form prescribed by the Attorney General of the State of Nebraska and shall be signed by the Nebraska registered agent. The bond shall provide: (a) That the applicant will faithfully perform all the terms and conditions of such license; (b) that the licensed dealer will first fully indemnify any holder of a lien or security interest created pursuant to section 60-164 or article 9, Uniform Commercial Code, whichever applies, in the order of its priority and then any person or other dealer by reason of any loss suffered because of (i) the substitution of any motor vehicle or trailer other than the one selected by the purchaser, (ii) the dealer's failure to deliver to the purchaser a clear and marketable title, (iii) the dealer's misappropriation of any funds belonging to the purchaser, (iv) any alteration on the part of the dealer so as to deceive the purchaser as to the year model of any motor vehicle or trailer, (v) any false and fraudulent representations or deceitful practices whatever in representing any motor vehicle or trailer, (vi) the dealer's failure to remit the proceeds from the sale of any motor vehicle which is subject to a lien or security interest to the holder of such lien or security interest, and (vii) the dealer's failure to pay any person or other dealer for the purchase of a motor vehicle, motorcycle, trailer, or any part or other purchase; and (c) that the motor vehicle, motorcycle, motor vehicle auction, or trailer dealer or wholesaler shall well, truly, and faithfully comply with all the provisions of his or her license and the acts of the Legislature relating to such license. The aggregate liability of the surety shall in no event exceed the penalty of such bond.

Source: Laws 1945, c. 143, § 11, p. 463; Laws 1947, c. 210, § 1, p. 686; Laws 1953, c. 216, § 1, p. 764; R.R.S.1943, § 60-619; Laws 1963, c. 365, § 15, p. 1180; Laws 1967, c. 394, § 11, p. 1238; Laws 1972, LB 1335, § 13; Laws 1974, LB 754, § 15; Laws 1984, LB 825, § 30; Laws 1989, LB 608, § 1; Laws 1999, LB 550, § 41; Laws 1999, LB 632, § 6; Laws 2005, LB 276, § 108; Laws 2007, LB681, § 2.

60-1420 Franchise; termination; hearing; when required.

(1) Except as provided in subsection (2) of this section, no franchisor shall terminate or refuse to continue any franchise unless the franchisor has first established, in a hearing held pursuant to section 60-1425, that:

(a) The franchisor has good cause for termination or noncontinuance;

(b) Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the franchisee's service formerly provided, or that the community cannot be reasonably expected to support such a dealership; and

(c) The franchisor is willing and able to comply with section 60-1430.02.

(2) Upon providing good and sufficient evidence to the board, a franchisor may terminate a franchise without such hearing (a) for a particular line-make if

the franchisor discontinues that line-make, (b) if the franchisee's license as a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer is revoked pursuant to the Motor Vehicle Industry Regulation Act, or (c) upon a mutual written agreement of the franchisor and franchisee.

Source: Laws 1971, LB 768, § 20; Laws 1987, LB 327, § 1; Laws 1989, LB 280, § 5; Laws 2010, LB816, § 72.
Effective date March 4, 2010.

60-1421 Franchise; termination; effect.

If franchisor is permitted to terminate or not continue a franchise, and is further permitted not to enter into a franchise, for the line-make in the community, no franchise shall thereafter be entered into for the sale of a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer of that line-make in the community, unless the franchisor has first established in a hearing held under the Motor Vehicle Industry Regulation Act that there has been a change of circumstances so that the community at that time can be reasonably expected to support the dealership.

Source: Laws 1971, LB 768, § 21; Laws 2010, LB816, § 73.
Effective date March 4, 2010.

60-1422 Franchise; hearing; approval.

No franchisor shall enter into any franchise for the purpose of establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership or warranty repair service facility, in any community in which the same line-make is then represented, unless the franchisor has first established in a hearing held under the Motor Vehicle Industry Regulation Act that there is good cause for such additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership under such franchise, or warranty repair service facility, and that it is in the public interest.

Source: Laws 1971, LB 768, § 22; Laws 2003, LB 182, § 2; Laws 2010, LB816, § 74.
Effective date March 4, 2010.

60-1427 Franchise; termination; additional dealership; application; hearing; burden of proof.

Upon hearing, the franchisor shall have the burden of proof to establish that under the Motor Vehicle Industry Regulation Act the franchisor should be granted permission to terminate or not continue the franchise or to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership.

Nothing contained in the act shall be construed to require or authorize any investigation by the board of any matter before the board under the provisions of sections 60-1420 to 60-1435. Upon hearing, the board shall hear the evidence introduced by the parties and shall make its decision solely upon the record so made.

Source: Laws 1971, LB 768, § 27; Laws 1972, LB 1335, § 14; Laws 2010, LB816, § 75.
Effective date March 4, 2010.

60-1428 Franchise; discovery; inspection; rules of civil procedure.

The rules of civil procedure relating to discovery and inspection shall apply to hearings held under the Motor Vehicle Industry Regulation Act, and the board may issue orders to give effect to such rules.

If issues are raised which would involve violations of any state or federal antitrust or price-fixing law, all discovery and inspection proceedings which would be available under such issues in a state or federal court action shall be available to the parties to the hearing, and the board may issue orders to give effect to such proceedings.

Evidence which would be admissible under the issues in a state or federal court action shall be admissible in a hearing held by the board. The board shall apportion all costs between the parties.

Source: Laws 1971, LB 768, § 28; Laws 2010, LB816, § 76.
Effective date March 4, 2010.

60-1430 Franchise; sale or transfer of ownership; franchisor; duties.

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, subject to subdivision (2) of section 60-1429, in the event of the sale or a contract for sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer or in the event of change in the executive management of the franchisee's dealership, the franchisor shall give effect to such a change in the franchise unless (1) the transfer of the franchisee's license under the Motor Vehicle Industry Regulation Act is denied or the new owner is unable to obtain a license under the act, as the case may be, or (2) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community if the franchisor has given written notice of such fact to the franchisee within sixty days of receipt by the franchisor of information reasonably necessary to evaluate the proposed change.

Source: Laws 1971, LB 768, § 30; Laws 1984, LB 825, § 33; Laws 1989, LB 280, § 7; Laws 2010, LB816, § 77.
Effective date March 4, 2010.

60-1430.01 Succession to new motor vehicle dealership by family member; conditions.

(1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within one hundred twenty days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated family member only for good cause.

(2) The manufacturer or distributor may request from a designated family member such personal financial data as is reasonably necessary to determine

whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor that succession, the manufacturer or distributor may, within sixty days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, or within sixty days after the receipt of the requested personal and financial data, whichever is later, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in subsection (3) of this section shall state the specific ground for the refusal to approve the succession and that discontinuance of the agreement shall take effect not less than ninety days after the date the notice is served.

(5) If notice of refusal is not served within the sixty days provided for in subsection (3) of this section, the dealer agreement shall continue in effect and shall be subject to termination only as otherwise permitted by the Motor Vehicle Industry Regulation Act.

(6) This section shall not preclude a new motor vehicle dealer from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone shall determine the succession rights to the management and operation of the dealership.

Source: Laws 1984, LB 825, § 34; Laws 2010, LB816, § 78.
Effective date March 4, 2010.

60-1430.02 Franchise termination, cancellation, or noncontinuation; termination, elimination, or cessation of line-make; payments required; mitigate damages.

(1) Upon the termination, cancellation, or noncontinuation of a franchise by the franchisor or franchisee pursuant to the Motor Vehicle Industry Regulation Act, the franchisor shall pay the franchisee:

(a) The dealer cost, plus any charges made by the franchisor for distribution, delivery, and taxes, less all allowances paid or credited to the franchisee by the franchisor, of unused, undamaged, and unsold motor vehicles in the franchisee's inventory acquired from the franchisor or another franchisee of the same line and make within the previous twelve months;

(b) The dealer cost, less all allowances paid or credited to the franchisee by the franchisor, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that (i) in the case of sheet metal, a comparable substitute for original packaging may be used if such supply, part, or accessory is offered for sale by the franchisor and was acquired from the franchisor or the predecessor franchisee as a part of the franchisee's initial inventory and (ii) in the case of a motorcycle franchise, the payment for such supplies, parts, and accessories shall be based upon the currently published dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories currently offered for sale by the franchisor and originally acquired from the franchisor or the predecessor franchisee as a part of the franchisee's initial inventory, and all such supplies, parts, and accessories shall be currently

identifiable and labeled and in the original packaging or a comparable substitute for the original packaging;

(c) The fair market value of each undamaged sign owned by the franchisee which bears a common name, trade name, or trademark of the franchisor if acquisition of such sign was recommended or required by the franchisor;

(d) The fair market value of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor which were recommended and required by the franchisor and are in good and usable condition except for reasonable wear and tear; and

(e) The cost of transporting, handling, packing, and loading motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

(2) The franchisor shall pay the franchisee the amounts specified in subsection (1) of this section within ninety days after the tender of the property if the franchisee has clear title to the property and is in a position to convey that title to the franchisor. This section shall not apply to a termination or noncontinuation of a franchise that is implemented as a result of the sale of the assets or stock of the franchisee.

(3)(a) If the termination, cancellation, or nonrenewal of a franchise is the result of the termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch, then, in addition to the payments to the franchisee pursuant to subsection (1) of this section, the manufacturer, distributor, or factory branch shall be liable to the franchisee for an amount at least equivalent to the fair market value of the franchise for the line-make, which shall be the greater of that value determined as of (i) the date the franchisor announces the action that results in termination, cancellation, or nonrenewal of the line-make or (ii) the date the action that resulted in termination, cancellation, or nonrenewal of the line-make first became general knowledge. In determining the fair market value of a franchise for a line-make, if the line-make is not the only line-make for which the franchisee holds a franchise in the dealership facilities, the franchisee shall also be entitled to compensation for the contribution of the line-make to payment of the rent or to covering obligations for the fair rental value of the franchise facilities for the period set forth in subdivision (b) of this subsection. Fair market value of the franchise for the line-make shall only include the goodwill value of the franchise for that line-make in the franchisee's community.

(b) If the line-make is the only line-make for which the franchisee holds a franchise, the manufacturer, distributor, or factory branch shall also pay assistance with respect to the franchise facilities leased or owned by the franchisee as follows:

(i) The manufacturer, distributor, or factory branch shall pay the franchisee a sum equivalent to the rent for the unexpired term of the lease or two years' rent, whichever is less; or

(ii) If the franchisee owns the franchise facilities, the manufacturer, distributor, or factory branch shall pay the franchisee a sum equivalent to the reasonable rental value of the franchise facilities for two years.

(c) To be entitled to franchise facilities assistance from the manufacturer, distributor, or factory branch, the franchisee shall have the obligation to mitigate damages by listing the franchise facilities for lease or sublease with a licensed real estate agent within thirty days after the effective date of the

termination of the franchise and by reasonably cooperating with the real estate agent in the performance of the agent's duties and responsibilities. If the franchisee is able to lease or sublease the franchise facilities on terms that are consistent with local zoning requirements to preserve the right to sell motor vehicles from the franchise facilities and the terms of the franchisee's lease, the franchisee shall be obligated to pay the manufacturer the net revenue received from such mitigation, but only following receipt of franchise facilities assistance payments pursuant to subdivision (3)(b) of this section and only up to the total amount of franchise facilities assistance payments that the franchisee has received.

(d) This subsection does not apply to the termination of a line-make by a franchisor of recreational vehicles.

(4) This section shall not relieve a franchisee from any other obligation to mitigate damages upon termination, cancellation, or noncontinuation of the franchise.

Source: Laws 1989, LB 280, § 8; Laws 2010, LB816, § 79.
Effective date March 4, 2010.

60-1432 Franchise; denial; license refused.

If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership in a community where the same line-make is then represented, without first complying with the Motor Vehicle Industry Regulation Act, no license under the act shall be issued to that franchisee or proposed franchisee to engage in the business of selling motor vehicles, combination motor vehicles and trailers, motorcycles, or trailers manufactured or distributed by that franchisor.

Source: Laws 1971, LB 768, § 32; Laws 2010, LB816, § 80.
Effective date March 4, 2010.

60-1436 Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.

A manufacturer or distributor shall not require or coerce any new motor vehicle dealer in this state to do any of the following:

(1) Order or accept delivery of any new motor vehicle, part or accessory, equipment, or other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(2) Offer or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(3) Participate monetarily in any advertising campaign or contest or purchase any promotional materials, display devices, or display decorations or materials at the expense of the new motor vehicle dealer;

(4) Join, contribute to, or affiliate with an advertising association;

(5) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of the Motor Vehicle Industry Regulation Act;

(6) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

(7) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products as long as the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer;

(8) Prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by the act or require any controversy between the new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer;

(9) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if such changes or alterations would be unreasonable;

(10) Release, convey, or otherwise provide customer information if to do so is unlawful or if the customer objects in writing to doing so, unless the information is necessary for the manufacturer, factory branch, or distributor to meet its obligations to consumers or the new motor vehicle dealer including vehicle recalls or other requirements imposed by state or federal law;

(11) Release to any unaffiliated third party any customer information which has been provided by the new motor vehicle dealer to the manufacturer except as provided in subdivision (10) of this section;

(12) Establish in connection with the sale of a motor vehicle prices at which the dealer must sell products or services not manufactured or distributed by the manufacturer or distributor, whether by agreement, program, incentive provision, or otherwise; or

(13) Underutilize the dealer's facilities by requiring or coercing a dealer to exclude or remove from the dealer's facilities operations for selling or servicing a line-make of motor vehicles for which the dealer has a franchise agreement to utilize the facilities, except that this subdivision does not prohibit a manufacturer from requiring exclusive sales facilities that are in compliance with reasonable requirements for the facilities.

Any action prohibited for a manufacturer or distributor under the Motor Vehicle Industry Regulation Act is also prohibited for a subsidiary which is wholly owned or controlled by contract by a manufacturer or distributor or in

which a manufacturer or distributor has more than a ten percent ownership interest, including a financing division.

Source: Laws 1984, LB 825, § 19; Laws 1999, LB 632, § 7; Laws 2010, LB816, § 81.
Effective date March 4, 2010.

60-1437 Manufacturer or distributor; prohibited acts with respect to new motor vehicles.

In addition to the restrictions imposed by section 60-1436, a manufacturer or distributor shall not:

(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor;

(2) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor;

(3) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest;

(4) Increase the price of any new motor vehicle which the new motor vehicle dealer had ordered and delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of such order. In the event of manufacturer or distributor price reduction or cash rebate, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to a new model or series of motor vehicles at the time of the introduction of the new model or series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

(a) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(b) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(c) Any increase in transportation charges due to an increase in rates charged by a common carrier or other transporter;

(5) Fail or refuse to sell or offer to sell to all franchised new motor vehicle dealers in a line-make every new motor vehicle sold or offered for sale to any franchised new motor vehicle dealer of the same line-make. However, the failure to deliver any such new motor vehicle shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or any other cause over which the franchisor has no control. A manufacturer or

distributor shall not require that any of its new motor vehicle dealers located in this state pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the new motor vehicle dealer's existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the provisions of this subdivision, nothing contained in this section shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this state purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of new motor vehicles. This subdivision shall not apply to manufacturers of recreational vehicles;

(6) Fail to offer dealers of a specific line-make a new franchise agreement containing substantially similar terms and conditions for sales of the line-make if the ownership of the manufacturer or distributor changes or there is a change in the plan or system of distribution;

(7) Take an adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States. A franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the motor vehicle would be exported to a location outside the United States. A dealer is presumed to have no knowledge that a motor vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States (a) the motor vehicle is titled, (b) the motor vehicle is registered, and (c) applicable state and local taxes are paid for the motor vehicle. Such presumption may be rebutted by direct, clear, and convincing evidence that the dealer knew or reasonably should have known at the time of the original sale or lease that the motor vehicle would be exported to a location outside the United States. Except as otherwise permitted by subdivision (7) of this section, a franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is void and unenforceable;

(8) Discriminate against a dealer holding a franchise for a line-make of the manufacturer or distributor in favor of other dealers of the same line-make in this state by:

(a) Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in this state during a similar time period; or

(b) Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in this state during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to

competing dealers of the same line-make in this state on substantially comparable terms; or

(9) Make any express or implied statement or representation directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of the dealer's retail sales contracts or leases in this state on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons.

Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

Source: Laws 1984, LB 825, § 20; Laws 1999, LB 632, § 8; Laws 2010, LB816, § 82.
Effective date March 4, 2010.

60-1438 Manufacturer or distributor; warranty obligation.

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service which such manufacturer or distributor requires the dealer to provide. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service and the time allowance for the performance of the work and service.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty parts and labor be less than the rates charged by the dealer for like parts and service to retail or fleet customers, as long as such rates are reasonable.

(3) A manufacturer or distributor shall not do any of the following:

(a) Fail to perform any warranty obligation;

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within thirty days after their approval. All claims

shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to audit the claims for two years after payment and to charge back to the new motor vehicle dealer the amount of any false or fraudulent claim. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error that does not put into question the legitimacy of the claim. If a claim is rejected for a clerical error, the dealer may resubmit a corrected claim in a timely manner.

(5) The warranty obligations set forth in this section shall also apply to any manufacturer of a new motor vehicle transmission, engine, or rear axle that separately warrants its components to customers.

Source: Laws 1984, LB 825, § 21; Laws 1991, LB 393, § 1; Laws 2003, LB 371, § 1; Laws 2010, LB816, § 83.
Effective date March 4, 2010.

60-1438.01 Manufacturer or distributor; restrictions with respect to franchises and consumer care or service facilities.

(1) For purposes of this section, manufacturer or distributor includes (a) a factory representative or a distributor representative or (b) a person who is affiliated with a manufacturer or distributor or who, directly or indirectly through an intermediary, is controlled by, or is under common control with, the manufacturer or distributor. A person is controlled by a manufacturer or distributor if the manufacturer or distributor has the authority directly or indirectly, by law or by agreement of the parties, to direct or influence the management and policies of the person. A franchise agreement with a Nebraska-licensed dealer which conforms to and is subject to the Motor Vehicle Industry Regulation Act is not control for purposes of this section.

(2) Except as provided in this section, a manufacturer or distributor shall not directly or indirectly:

(a) Own an interest in a franchise, franchisee, or consumer care or service facility, except that a manufacturer or distributor may hold stock in a publicly held franchise, franchisee, or consumer care or service facility so long as the manufacturer or distributor does not by virtue of holding such stock operate or control the franchise, franchisee, or consumer care or service facility;

(b) Operate or control a franchise, franchisee, or consumer care or service facility; or

(c) Act in the capacity of a franchisee.

(3) A manufacturer or distributor may own an interest in a franchisee or otherwise control a franchise for a period not to exceed twelve months after the date the manufacturer or distributor acquires the franchise if:

(a) The person from whom the manufacturer or distributor acquired the franchise was a franchisee; and

(b) The franchise is for sale by the manufacturer or distributor.

(4) For purposes of broadening the diversity of its franchisees and enhancing opportunities for qualified persons who lack the resources to purchase a

franchise outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a franchise if the manufacturer's or distributor's participation in the franchise is in a bona fide relationship with a franchisee and the franchisee:

(a) Has made a significant investment in the franchise, which investment is subject to loss;

(b) Has an ownership interest in the franchise; and

(c) Operates the franchise under a plan to acquire full ownership of the franchise within a reasonable time and under reasonable terms and conditions.

(5) On a showing of good cause by a manufacturer or distributor, the board may extend the time limit set forth in subsection (3) of this section. An extension may not exceed twelve months. An application for an extension after the first extension is granted is subject to protest by a franchisee of the same line-make whose franchise is located in the same community as the franchise owned or controlled by the manufacturer or distributor.

(6) The prohibition in subdivision (2)(b) of this section shall not apply to any manufacturer of manufactured housing, recreational vehicles, or trailers.

Source: Laws 2000, LB 1018, § 3; Laws 2010, LB816, § 84.
Effective date March 4, 2010.

60-1440 Violations; actions for damages and equitable relief; arbitration.

(1) Any person who is or may be injured by a violation of the Motor Vehicle Industry Regulation Act or any party to a franchise whose business or property is damaged by a violation of the act relating to that franchise may bring an action for damages and equitable relief, including injunctive relief.

(2) When a violation of the act can be shown to be willful or wanton, the court shall award damages. If the manufacturer engages in continued multiple violations of the act, the court may, in addition to any other damages, award court costs and attorney's fees.

(3) A new motor vehicle dealer, if he or she has not suffered any loss of money or property, may obtain final equitable relief if it can be shown that a violation of the act by a manufacturer may have the effect of causing such loss of money or property.

(4) If any action to enforce any of the provisions of the act is brought by a new motor vehicle dealer against a manufacturer and the new motor vehicle dealer prevails, he or she shall be awarded reasonable attorney's fees and the court shall assess costs against the manufacturer.

(5) If any dispute between a franchisor and franchisee becomes subject to resolution by means of binding arbitration, the provisions of the act regulating the relationship of franchisor and franchisee shall apply in any such proceeding.

Source: Laws 1984, LB 825, § 31; Laws 1989, LB 280, § 9; Laws 2010, LB816, § 85.
Effective date March 4, 2010.

ARTICLE 15
DEPARTMENT OF MOTOR VEHICLES

Section
60-1513. Department of Motor Vehicles Cash Fund; created; use; investment.
60-1515. Department of Motor Vehicles Cash Fund; use; legislative intent.
60-1516. Repealed. Laws 2005, LB 1, § 11.

60-1513 Department of Motor Vehicles Cash Fund; created; use; investment.

The Department of Motor Vehicles Cash Fund is hereby created. The fund shall be administered by the Director of Motor Vehicles. The fund shall be used by the Department of Motor Vehicles to carry out its duties as deemed necessary by the Director of Motor Vehicles, except that transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Department of Motor Vehicles 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 1993, LB 491, § 17; Laws 1994, LB 1066, § 48; Laws 1995, LB 467, § 16; Laws 1996, LB 1191, § 1; Laws 2003, LB 209, § 16; Laws 2006, LB 1061, § 9; Laws 2007, LB322, § 11.

Cross References

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

60-1515 Department of Motor Vehicles Cash Fund; use; legislative intent.

(1) The Legislature hereby finds and declares that a statewide system for the collection, storage, and transfer of data on vehicle titles and registration and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in vehicle titling and registration. The Legislature hereby finds and declares that the electronic issuance of operators' licenses and state identification cards using a digital system as described in section 60-484.01 and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in issuing operators' licenses and state identification cards.

(2) It is therefor the intent of the Legislature that the Department of Motor Vehicles shall use a portion of the fees appropriated by the Legislature to the Department of Motor Vehicles Cash Fund as follows:

(a) To pay for the cost of issuing motor vehicle titles and registrations on a system designated by the department. The costs shall include, but not be limited to, software and software maintenance, programming, processing charges, and equipment including such terminals, printers, or other devices as deemed necessary by the department after consultation with the county to support the issuance of motor vehicle titles and registrations. The costs shall not include the cost of county personnel or physical facilities provided by the counties;

(b) To furnish to the counties the certificate of registration forms specified in section 60-390. The certificate of registration form shall be prescribed by the department;

(c) To pay for the costs of an operator's license system as specified in sections 60-484.01 and 60-4,119 and designated by the department. The costs shall be

limited to such terminals, printers, software, programming, and other equipment or devices as deemed necessary by the department to support the issuance of such licenses and state identification cards in the counties and by the department; and

(d) To pay for the motor vehicle insurance data base created under section 60-3,136.

Source: Laws 1993, LB 491, § 19; Laws 1995, LB 467, § 17; Laws 2001, LB 574, § 31; Laws 2002, LB 488, § 6; Laws 2005, LB 274, § 258.

60-1516 Repealed. Laws 2005, LB 1, § 11.

ARTICLE 18
CAMPER UNITS

Section
60-1801. Camper unit, defined.
60-1803. Permit; application; contents; fee.
60-1804. Department of Motor Vehicles; validation decal; furnish.
60-1807. Permit; renewal; issuance; receipt required.

60-1801 Camper unit, defined.

As used in sections 60-1801 to 60-1808, unless the context otherwise requires, camper unit means any structure designed and intended to be placed on a truck and to provide living quarters and which may be removed from a truck without dismantling or damage when ordinary care is exercised. Camper unit does not include a recreational vehicle as defined in section 60-347, or a mobile home as defined in section 77-3701.

Source: Laws 1969, c. 627, § 1, p. 2526; Laws 1981, LB 168, § 12; Laws 2005, LB 274, § 259.

60-1803 Permit; application; contents; fee.

Every owner of a camper unit shall make application for a permit to the county treasurer or designated county official pursuant to section 23-186 of the county in which such owner resides or is domiciled or conducts a bona fide business, or if such owner is not a resident of this state, such application shall be made to the county treasurer or designated county official of the county in which such owner actually lives or conducts a bona fide business, except as otherwise expressly provided. Any person, firm, association, or corporation who is neither a resident of this state nor domiciled in this state, but who desires to obtain a permit for a camper unit owned by such person, firm, association, or corporation, may register the same in any county of this state. The application shall contain a statement of the name, post office address, and place of residence of the applicant, a description of the camper unit, including the name of the maker, the number, if any, affixed or assigned thereto by the manufacturer, the weight, width, and length of the vehicle, the year, the model, and the trade name or other designation given thereto by the manufacturer, if any. Camper unit permits required by sections 60-1801 to 60-1808 shall be issued by the county treasurer or designated county official in the same manner as registration certificates as provided in the Motor Vehicle Registration Act except as otherwise provided in sections 60-1801 to 60-1808. Every applicant

for permit, at the time of making such application, shall exhibit to the county treasurer or designated county official evidence of ownership of such camper unit. Contemporaneously with such application, the applicant shall pay a permit fee in the amount of two dollars which shall be distributed in the same manner as all other motor vehicle license fees. Upon proper application being made and the payment of the permit fee, the applicant shall be issued a permit.

Source: Laws 1969, c. 627, § 3, p. 2526; Laws 1993, LB 112, § 40; Laws 1995, LB 37, § 11; Laws 1997, LB 271, § 34; Laws 2005, LB 274, § 260.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-1804 Department of Motor Vehicles; validation decal; furnish.

The Department of Motor Vehicles shall design, procure, and furnish to the county treasurers a validation decal which may be attached to the camper unit as evidence that a permit has been obtained. Each county treasurer shall furnish a validation decal to the person obtaining the permit and such decal shall be attached to the camper unit so as to be clearly visible from the outside of the unit.

Source: Laws 1969, c. 627, § 4, p. 2527; Laws 2005, LB 274, § 261.

60-1807 Permit; renewal; issuance; receipt required.

In issuing such permits or renewals, the county treasurer or designated county official pursuant to section 23-186 shall neither receive nor accept such application nor permit fee nor issue any permit for any such camper unit unless the applicant first exhibits proof by receipt or otherwise (1) that he or she has paid all applicable taxes and fees upon such camper unit based on the computation thereof made in the year preceding the year for which such application for permit is made, (2) that he or she was the owner of another camper unit or other motor vehicles on which he or she paid the taxes and fees during such year, or (3) that he or she owned no camper unit or other motor vehicle upon which taxes and fees might have been imposed during such year.

Source: Laws 1969, c. 627, § 7, p. 2528; Laws 1997, LB 271, § 35; Laws 2005, LB 274, § 262.

ARTICLE 19

ABANDONED MOTOR VEHICLES

Section
60-1901. Abandoned vehicle, defined.
60-1902. Abandoned vehicle; title; vest in local authority or state agency; when.

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, a utility-type vehicle, or a 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; Laws 2010, LB650, § 46.
Operative date January 1, 2011.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-1902 Abandoned vehicle; title; vest in local authority or state agency; when.

If an abandoned vehicle, at the time of abandonment, has no license plates of the current year or valid In Transit stickers issued pursuant to section 60-376 affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of two hundred fifty dollars or less, title shall immediately vest in the local authority or state agency having jurisdiction thereof as provided in

section 60-1904. Any certificate of title issued under this section to the local authority or state agency shall be issued at no cost to such authority or agency.

Source: Laws 1971, LB 295, § 2; Laws 1974, LB 689, § 1; Laws 1975, LB 131, § 1; Laws 1999, LB 90, § 2; Laws 2005, LB 274, § 264.

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, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Motorcycle Safety Education 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; Laws 2009, First Spec. Sess., LB3, § 37.
Effective date November 21, 2009.

Cross References

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

ARTICLE 24

PARKING LOTS

Section
60-2401. Restricted parking lots; cities of the metropolitan or primary class; vehicles towed away; when.
60-2401.01. Restricted parking lots; unauthorized parking; towing; violation; penalty.
60-2403. Vehicle towed away; notification to local law enforcement agency; renotification.
60-2404. Vehicle towed away; lien and disposition; when.
60-2405. Vehicle towed away; properly parked; liability.
60-2406. Vehicle towed away; liability for reasonably foreseeable damages.
60-2407. Vehicle; full possession of towing vehicle; when; effect.

Section
60-2408. Owner or driver; given written statement by tower; contents.
60-2409. Person towing vehicle; ascertain owner or tenant of lot.
60-2410. Towing and storage fees; liability; lien; notice.
60-2411. Owner or tenant of lot; solicit or accept compensation from tower; prohibited.

60-2401 Restricted parking lots; cities of the metropolitan or primary class; vehicles towed away; when.

In cities of the metropolitan or primary class which have not adopted an ordinance conforming to section 60-2401.01, vehicles parked in a restricted parking lot without the consent of the owner or tenant shall be subject to being towed away, if the lot is properly posted.

Source: Laws 1979, LB 348, § 1; Laws 1981, LB 47, § 1; Laws 2010, LB1065, § 1.
Effective date July 15, 2010.

60-2401.01 Restricted parking lots; unauthorized parking; towing; violation; penalty.

Except in cities of the metropolitan or primary class, any person parking a vehicle in a properly posted, restricted parking lot without the consent of the owner or tenant authorized to give permission shall be guilty of an infraction and the vehicle shall be subject to being towed away at the request of such lot owner or tenant. Any person found guilty under this section shall be subject to the penalties provided in section 29-436 for infractions. If the identity of the operator of a vehicle in violation of this section cannot be determined, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such infraction. When any law enforcement officer observes or is advised that a vehicle may be in violation of this section, he or she shall make a determination as to whether a violation has in fact occurred and, if so, shall personally serve or attach to such vehicle a citation pursuant to section 29-424, directed to the owner or operator of such vehicle, which shall set forth the nature of the violation. Any person who refuses to sign the citation or otherwise comply with the command of the citation shall be punished as provided by section 29-426. As used in this section, law enforcement officer shall include any authorized representative of a law enforcement agency.

Source: Laws 1981, LB 47, § 2; Laws 2010, LB1065, § 2.
Effective date July 15, 2010.

60-2403 Vehicle towed away; notification to local law enforcement agency; renotification.

Anyone towing a vehicle away pursuant to sections 60-2401 to 60-2411 shall notify the local law enforcement agency within twenty-four hours of the license number of the vehicle. Anyone towing a vehicle away pursuant to sections 60-2401 to 60-2411 and holding the vehicle for more than twenty-nine days shall, on the thirtieth day, renotify the local law enforcement agency of the vehicle's license number for the purpose of ascertaining whether the vehicle has been reported stolen or missing. Such renotification shall be repeated each

thirty days while the vehicle is held by the tower or until such time as the tower has placed a lien on the vehicle as provided by section 60-2404.

Source: Laws 1979, LB 348, § 3; Laws 2010, LB1065, § 3.
Effective date July 15, 2010.

60-2404 Vehicle towed away; lien and disposition; when.

A vehicle towed away under sections 60-2401 to 60-2411, which is not claimed by the owner within ninety days after towing, is subject to lien and disposition under Chapter 52, article 6, by the person who towed the vehicle.

Source: Laws 1979, LB 348, § 4; Laws 2005, LB 82, § 6; Laws 2010, LB1065, § 4.
Effective date July 15, 2010.

60-2405 Vehicle towed away; properly parked; liability.

Any owner or tenant causing the towing away of a vehicle that is not improperly parked on a restricted lot shall cause the return of the vehicle to its owner or driver at no charge to such owner or driver. The person causing the vehicle to be towed shall be liable for any reasonably foreseeable damage incurred by the owner or driver of the vehicle due to loss of transportation.

Source: Laws 1979, LB 348, § 5; Laws 2010, LB1065, § 5.
Effective date July 15, 2010.

60-2406 Vehicle towed away; liability for reasonably foreseeable damages.

Anyone towing away a vehicle pursuant to sections 60-2401 to 60-2411 shall be liable for any reasonably foreseeable damages to the vehicle that occur during the hookup, towing, or disengagement of the vehicle to or from the towing vehicle and anyone storing such a towed vehicle shall be liable for any reasonably foreseeable damage to the vehicle and the personal contents therein during the storage period.

Source: Laws 1979, LB 348, § 6; Laws 2010, LB1065, § 6.
Effective date July 15, 2010.

60-2407 Vehicle; full possession of towing vehicle; when; effect.

Anyone attempting to tow away a vehicle pursuant to sections 60-2401 to 60-2411 shall not be in full possession of the vehicle to be towed until the vehicle has been fully and completely attached to his or her towing vehicle. The tower shall, upon request of the owner or driver of the vehicle to be towed, disengage the towing apparatus at any time prior to taking full possession, as defined in this section, of the vehicle.

Source: Laws 1979, LB 348, § 7; Laws 2010, LB1065, § 7.
Effective date July 15, 2010.

60-2408 Owner or driver; given written statement by tower; contents.

The owner or driver of any vehicle towed away pursuant to sections 60-2401 to 60-2411 shall, upon regaining possession of the vehicle from the tower, be given a written statement by the tower fully detailing: (1) The name and address of the person or persons who caused the vehicle to be towed; (2) under what

statutory authority the vehicle was towed; and (3) his or her rights under sections 60-2401 to 60-2411.

Source: Laws 1979, LB 348, § 8; Laws 2010, LB1065, § 8.
Effective date July 15, 2010.

60-2409 Person towing vehicle; ascertain owner or tenant of lot.

Anyone towing a vehicle pursuant to sections 60-2401 to 60-2411 shall take reasonable steps to ascertain that the person causing the vehicle to be towed is the owner or tenant of the lot from which the vehicle is to be towed.

Source: Laws 1979, LB 348, § 9; Laws 2010, LB1065, § 9.
Effective date July 15, 2010.

60-2410 Towing and storage fees; liability; lien; notice.

(1) The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any such towing or storage fee shall be a lien upon the vehicle under Chapter 52, article 6, and, except as provided in subsection (3) of this section, shall be prior to all other claims. Any person towing or storing a vehicle may retain possession of such vehicle until such charges are paid or, after ninety days, may dispose of such vehicle to satisfy the lien. Upon payment of such charges, the person towing or storing the vehicle shall return possession of the vehicle to the (a) owner, (b) lienholder, or (c) any other person lawfully entitled to the possession of such vehicle making payment of such charges. The lien provided for in this section shall not apply to the contents of any vehicle.

(2) The person towing the vehicle shall, within fifteen business days after towing, notify any lienholder appearing on the certificate of title of the vehicle and the owner of the vehicle of the towing of the vehicle. The notice shall be sent by certified mail, return receipt requested, to the last-known address of the lienholder and owner of the vehicle. The notice shall contain:

(a) The make, model, color, year, and vehicle identification number of the vehicle;

(b) The name, address, and telephone number of the person who towed the vehicle;

(c) The date of towing;

(d) The daily storage fee and the storage fee accrued as of the date of the notification; and

(e) A statement that the vehicle is subject to lien and disposition by sale or other manner ninety days after the date of towing under Chapter 52, article 6.

(3) Failure to provide notice as prescribed in subsection (2) of this section shall result in the lien of the person who towed the vehicle being subordinate to the lien of the lienholder appearing on the certificate of title and render void any disposition of the vehicle by the person who towed the vehicle.

Source: Laws 1979, LB 348, § 10; Laws 1988, LB 833, § 4; Laws 2005, LB 82, § 7; Laws 2010, LB1065, § 10.
Effective date July 15, 2010.

60-2411 Owner or tenant of lot; solicit or accept compensation from tower; prohibited.

Any owner or tenant causing the towing away of a vehicle shall not solicit or accept therefor a commission, gift, gratuity, or any form of compensation or wealth from the person or business towing away the vehicle.

Source: Laws 1979, LB 348, § 11; Laws 2010, LB1065, § 11.
Effective date July 15, 2010.

ARTICLE 25

RIDE SHARING

Section
60-2507. Motor vehicle; exemption from certain laws; when.

60-2507 Motor vehicle; exemption from certain laws; when.

A motor vehicle used in a ride-sharing arrangement that has a seating capacity for not more than fifteen persons, including the driver, shall not be a bus or commercial vehicle under the Motor Vehicle Registration Act or the Nebraska Rules of the Road.

Source: Laws 1981, LB 50, § 7; Laws 1993, LB 370, § 474; Laws 2005, LB 274, § 265.

Cross References

Motor Vehicle Registration Act, see section 60-301.
Nebraska Rules of the Road, see section 60-601.

ARTICLE 26

WRECKER OR SALVAGE DEALERS

Section
60-2602. Acquisition of vehicle or parts; duties; record; contents.
60-2603. Possession of salvage vehicle on August 26, 1983; effect.
60-2604. Possession of major component part on August 26, 1983; duties.

60-2602 Acquisition of vehicle or parts; duties; record; contents.

Whenever any wrecker or salvage dealer who is required to be licensed pursuant to the Motor Vehicle Industry Regulation Act acquires, after August 26, 1983, any material which is or may have been a vehicle or major component part:

(1) The wrecker or salvage dealer shall determine by means of a driver's license, state identification card, certificate of employer's federal identification number, or license issued by the board, the identity of the person or firm from whom such material is acquired; and

(2) Each such wrecker or salvage dealer shall maintain a record of the following information:

(a) The name and address of the person or firm from whom such material was acquired;

(b) The means by which such person or firm was identified, including the number and issuing state of any driver's license or state identification card, the federal employer's identification number, or the licensee's number issued by the board;

(c) A general description of the material acquired, including, but not limited to, if available and identifiable, the year, make, model, manufacturer's vehicle identification number, and any other identifying marks or numbers, of any vehicle or major component part; and

(d) The date of acquisition, the purchase price, including the value and description of any material traded, and the type of payment, including the number of any check or draft issued or received in exchange for such material.

Source: Laws 1983, LB 234, § 22; Laws 2010, LB816, § 86.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-2603 Possession of salvage vehicle on August 26, 1983; effect.

Any wrecker or salvage dealer licensed by the board pursuant to the Motor Vehicle Industry Regulation Act having possession on August 26, 1983, of both a salvage vehicle and a certificate of title for such vehicle, either issued to or assigned to such a person, shall not be required to obtain a salvage branded certificate of title for such vehicle except upon transfer of the vehicle to a person not required to be licensed as a wrecker or salvage dealer by the board.

Source: Laws 1983, LB 234, § 23; Laws 2002, LB 830, § 24; Laws 2010, LB816, § 87.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-2604 Possession of major component part on August 26, 1983; duties.

Any wrecker or salvage dealer required to be licensed by the board pursuant to the Motor Vehicle Industry Regulation Act having possession on August 26, 1983, of a major component part shall include in his or her regular business records the information required to be recorded by subdivision (2) of section 60-2602, to the extent such information is available.

Source: Laws 1983, LB 234, § 24; Laws 2010, LB816, § 88.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

ARTICLE 27
MANUFACTURER'S WARRANTY DUTIES

Section
60-2701. Terms, defined.

60-2701 Terms, defined.

As used in sections 60-2701 to 60-2709, unless the context otherwise requires:

(1) Consumer shall mean the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, household, or business purposes, any person to whom such motor vehicle is transferred for the same

purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

(2) Motor vehicle shall mean a new motor vehicle as defined in section 60-1401.30 which is sold in this state, excluding recreational vehicles as defined in section 60-347; and

(3) Manufacturer's express warranty shall mean the written warranty, so labeled, of the manufacturer of a new motor vehicle.

Source: Laws 1983, LB 155, § 1; Laws 1989, LB 280, § 10; Laws 2005, LB 274, § 266; Laws 2010, LB816, § 89.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

ARTICLE 29
UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT

Section
60-2907. Motor vehicle record; disclosure; authorized purposes.

60-2907 Motor vehicle record; disclosure; authorized purposes.

The department and any officer, employee, agent, or contractor of the department having custody of a motor vehicle record shall, upon the verification of identity and purpose of a requester, disclose and make available the requested motor vehicle record, including the personal information in the record, for the following purposes:

(1) For use by any federal, state, or local governmental agency, including any court or law enforcement agency, in carrying out the agency's functions or by a private person or entity acting on behalf of a governmental agency in carrying out the agency's functions;

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors but only:

(a) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(b) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or governmental agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and

orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body;

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;

(7) For use in providing notice to the owners of abandoned, towed, or impounded vehicles;

(8) For use only for a purpose permitted under this section either by a private detective, plain clothes investigator, or private investigative agency licensed under sections 71-3201 to 71-3213;

(9) For use by an employer or the employer's agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., or pursuant to sections 60-4,132 and 60-4,141;

(10) For use in connection with the operation of private toll transportation facilities;

(11) For bulk distribution for surveys of, marketing to, or solicitations of persons who have expressly consented to such disclosure if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department on a form prescribed by the department;

(12) For any use if the requester has obtained the notarized written consent of the individual who is the subject of the personal information being requested and has provided proof of receipt of such written consent to the department or an officer, employee, agent, or contractor of the department;

(13) For use, including redisclosure through news publication, of a member of a medium of communication as defined in section 20-145 who requests such information in connection with preparing, researching, gathering, or confirming news information involving motor vehicle or driver safety or motor vehicle theft;

(14) For use by the federally designated organ procurement organization for Nebraska to establish and maintain the Donor Registry of Nebraska as provided in section 71-4822; and

(15) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

Source: Laws 1997, LB 635, § 7; Laws 2000, LB 1317, § 13; Laws 2004, LB 559, § 6; Laws 2010, LB1036, § 34.
Operative date January 1, 2011.

ARTICLE 30

FEES AND TAXATION

Section
60-3001. Repealed. Laws 2005, LB 274, § 286.
60-3002. Repealed. Laws 2005, LB 274, § 286.

Section
60-3003. Repealed. Laws 2005, LB 274, § 286.
60-3004. Repealed. Laws 2005, LB 274, § 286.
60-3005. Repealed. Laws 2005, LB 274, § 286.
60-3005.01. Repealed. Laws 2005, LB 274, § 286.
60-3006. Repealed. Laws 2005, LB 274, § 286.
60-3007. Repealed. Laws 2005, LB 274, § 286.
60-3008. Repealed. Laws 2005, LB 274, § 286.
60-3009. Repealed. Laws 2005, LB 274, § 286.

60-3001 Repealed. Laws 2005, LB 274, § 286.

60-3002 Repealed. Laws 2005, LB 274, § 286.

60-3003 Repealed. Laws 2005, LB 274, § 286.

60-3004 Repealed. Laws 2005, LB 274, § 286.

60-3005 Repealed. Laws 2005, LB 274, § 286.

60-3005.01 Repealed. Laws 2005, LB 274, § 286.

60-3006 Repealed. Laws 2005, LB 274, § 286.

60-3007 Repealed. Laws 2005, LB 274, § 286.

60-3008 Repealed. Laws 2005, LB 274, § 286.

60-3009 Repealed. Laws 2005, LB 274, § 286.