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REISSUE REVISED STATUTES

REVISED STATUTES
OF
NEBRASKA

2013 SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 TO 57, INCLUSIVE

CITE AS FOLLOWS

R.S.SUPP.,2013

Errata:

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

Reissue of Volumes 1 to 6

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

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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2013 Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the One Hundred Third Legislature, First Session, 2013, of the Nebraska State Legislature as shown by the enrolled bills on file in the office of the Secretary of State, save and except such compilation changes and omissions as are specifically authorized by sections 49-705 and 49-769.

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Lincoln, Nebraska
August 1, 2013

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ANNOTATIONS

CONSTITUTION OF THE STATE OF NEBRASKA

Article I, sec. 7.

A consensual search by its very definition is circumscribed by the extent of the permission given, as determined by the totality of the circumstances. State v. Rathjen, 16 Neb. App. 799, 751 N.W.2d 668 (2008).

A suspect's general consent to a search of his pickup truck authorized a police officer to search a locked toolbox in the bed of the pickup truck. State v. Rathjen, 16 Neb. App. 799, 751 N.W.2d 668 (2008).

A condition of the appellant's probation requiring him to submit to warrantless searches contributed to the rehabilitation process and was reasonable and therefore, constitutional. State v. Colby, 16 Neb. App. 644, 748 N.W.2d 118 (2008).

The fact that the appellant's probation officer was not present during a warrantless probation search of the appellant's person and vehicle did not render the search unreasonable. State v. Colby, 16 Neb. App. 644, 748 N.W.2d 118 (2008).

A person is seized by police and thus entitled to challenge the government's action under the Fourth Amendment when the officer, by means of physical force or show of authority, terminates or restrains his or her freedom of movement. Tyler v. Kyler, 15 Neb. App. 939, 739 N.W.2d 463 (2007).

A police officer may make a seizure by a show of authority and without the use of physical force, but there is no seizure without actual submission; otherwise, there is at most an attempted seizure, so far as the Fourth Amendment is concerned. Tyler v. Kyler, 15 Neb. App. 939, 739 N.W.2d 463 (2007).

A search without a warrant of a readily mobile, unoccupied vehicle in a residential area was justified under the automobile exception to the warrant requirement where police officers had probable cause to believe that the search would uncover evidence of a crime. State v. Sanders, 15 Neb. App. 554, 733 N.W.2d 197 (2007).

The failure of an individual to secure his vehicle decreased his expectation of privacy relating to the vehicle. State v. Sanders, 15 Neb. App. 554, 733 N.W.2d 197 (2007).

The continued detention of a citizen by a law enforcement officer for approximately 52 minutes after a traffic stop and while awaiting the arrival of a drug detection dog—which detention was based upon a reasonable, articulable suspicion that the citizen was involved in additional criminal activity—was reasonable where the investigative methods employed during the detention were reasonable and the scope and intrusiveness of the detention were reasonable. State v. Kehm, 15 Neb. App. 199, 724 N.W.2d 88 (2006).

A citizen is not seized under the Fourth Amendment to the U.S. Constitution and this provision of the Nebraska Constitution when a police-citizen encounter involves no restraint of the citizen's liberty, but, rather, noncoercive questioning regarding the status of the citizen's operator's license. State v. Hisey, 15 Neb. App. 100, 723 N.W.2d 99 (2006).

An officer does not have probable cause to effectuate an arrest without a warrant where the officer relies upon erroneous information provided from records maintained by Nebraska's Department of Motor Vehicles as the basis for the arrest. State v. Hisey, 15 Neb. App. 100, 723 N.W.2d 99 (2006).

Article I, sec. 11.

Under this provision of the Nebraska Constitution, a criminal defendant's right to conduct his or her own defense is not violated when the court determines that a defendant competent to stand trial nevertheless suffers from severe mental illness to the point where he or she is not competent to conduct trial proceedings without counsel. State v. Lewis, 280 Neb. 246, 785 N.W.2d 834 (2010).

An appeal based solely on an alleged violation of the constitutional right to a speedy trial can be effectively vindicated in an appeal after judgment. State v. Wilson, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

The denial of a motion for discharge, based upon a constitutional right to a speedy trial and in the absence of a nonfrivolous statutory claim, is interlocutory. State v. Wilson, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

Article III, sec. 3.

Where the 10-percent signature requirement contained in this provision is not fulfilled, a referendum vote does not repeal a legislative bill retroactively so as to ameliorate the effects of the legislation while it was in effect. Haskell v. Madison Cty. Sch. Dist. No. 0001, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

Article V, sec. 22.

Nebraska's Uniform Declaratory Judgments Act does not waive the State's sovereign immunity. JHK, Inc. v. Nebraska Dept. of Banking & Finance, 17 Neb. App. 186, 757 N.W.2d 515 (2008).

Article VIII, sec. 1.

This provision and section 77-1501, read together, require a county board of equalization to ultimately value comparable properties similarly, even where separate protests are heard in the first instance by referees who recommend greatly disparate property valuations. Zabawa v. Douglas Cty. Bd. of Equal., 17 Neb. App. 221, 757 N.W.2d 522 (2008).

STATUTES OF THE STATE OF NEBRASKA

7-101.

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

8-1118.

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

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

13-905.

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

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

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

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

13-910.

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

13-911.

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

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

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

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

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

13-919.

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

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

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

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

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

14-366.

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

14-411.

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

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

18-2148.

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

18-2523.

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

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

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

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

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

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

18-2527.

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

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

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18-2528.

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

18-2538.

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

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

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

19-1832.

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

20-209.

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

24-221.

The Nebraska Supreme Court will not accept a federal district court's certified question from an action challenging a city ordinance when the question fails to specify the nature of the plaintiffs' challenge to the ordinance on state law grounds and fails to identify any state statutes or state constitutional provisions that were allegedly violated. Keller v. City of Fremont, 280 Neb. 788, 790 N.W.2d 711 (2010).

24-517.

Subsection (1) of this section confers upon the county court exclusive original jurisdiction of all matters relating to the decedents' estates, including the probate of wills and the construction thereof, except as provided in sections 30-2464(c) and 30-2486. Lenners v. St. Paul Fire & Marine Ins. Co., 18 Neb. App. 772, 793 N.W.2d 357 (2010).

In the exercise of its jurisdiction over a custody modification proceeding, a county court sitting as a juvenile court cannot permanently modify child custody through the mere adoption of a case plan pursuant to section 43-285(2). In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

This section, combined with sections 25-2740 and 43-247, vests juvenile courts and county courts sitting as juvenile courts with jurisdiction over a custody modification proceeding if the court already has jurisdiction over the juvenile under a separate provision of section 43-247. In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

Jurisdiction over confirmation of arbitration awards is conferred upon the district court, and the county court has no such jurisdiction. MBNA America Bank v. Hansen, 16 Neb. App. 536, 745 N.W.2d 609 (2008).

25-201.02.

This section eliminates the 6-month grace period from the time in which a substituted defendant could have acquired notice of the suit; therefore, the substituted defendant must have had notice before the statute of limitations ran. Kotlarz v. Olson Bros., Inc., 16 Neb. App. 1, 740 N.W.2d 807 (2007).

25-205.

A suit to collect on a contract that is from the foreclosed deed of trust is governed by the statute of limitations found in this section, rather than the 3-month statute of limitations found in section 76-1013. Boxum v. Munce, 16 Neb. App. 731, 751 N.W.2d 657 (2008).

25-217.

This section is self-executing. If a defendant who is named in the action is not served with summons and a copy of the complaint within 6 months from the date the complaint is filed, the action is dismissed by operation of law, even if a full trial has been held on the merits. Davis v. Choctaw Constr., 280 Neb. 714, 789 N.W.2d 698 (2010).

25-222.

Nebraska has a 2-year statute of limitations for actions for professional negligence except that causes of action not discovered, and which could not have been reasonably discovered until after the limitations period has run, can be filed within 1 year of discovery, with an overall limitation of 10 years after the date of rendering or failing to render such professional service which provides the basis for the cause of action. Anonymous v. Vasconcellos, 15 Neb. App. 363, 727 N.W.2d 708 (2007).

Under the 1-year discovery provision of this section, it is not necessary that the plaintiff have knowledge of the exact nature or source of the problem, but only knowledge that the problem existed. Anonymous v. Vasconcellos, 15 Neb. App. 363, 727 N.W.2d 708 (2007).

25-301.

A party has no standing to sue if the party has assigned all of its rights in the property which is the subject of the assignment. Sherman v. Sherman, 16 Neb. App. 766, 751 N.W.2d 168 (2008).

25-328.

Under this section, an intervenor must have a direct and legal interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment that may be rendered in the action. In re Adoption of Amea R., 282 Neb. 751, 807 N.W.2d 736 (2011).

A petition in intervention under this section must be filed before the trial. American Nat. Bank v. Medved, 281 Neb. 799, 801 N.W.2d 230 (2011).

25-505.01.

This section does not require service to be sent to the defendant's residence or restrict delivery to the addressee. But service must still comply with the due process requirement that notice be reasonably calculated to apprise interested parties of the pendency of the action and to afford them the opportunity to present their objections. Doe v. Board of Regents, 280 Neb. 492, 788 N.W.2d 264 (2010).

25-516.01.

A voluntary appearance signed the day before a complaint or petition is filed waives service of process if filed simultaneously with or after the petition. Johnson v. Johnson, 282 Neb. 42, 803 N.W.2d 420 (2011).

25-601.

A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice. In re Guardianship of David G., 18 Neb. App. 918, 798 N.W.2d 131 (2011).

An action may be dismissed without prejudice to a future action by the plaintiff before the final submission of the case to the court where the trial is by the court, and it is generally a right of the plaintiff that is not a matter of judicial grace or discretion. In re Guardianship of David G., 18 Neb. App. 918, 798 N.W.2d 131 (2011).

After submission, a trial court has no authority to dismiss a case without prejudice on the basis that a plaintiff has failed to produce sufficient evidence to sustain his or her claims. Holling v. Holling, 16 Neb. App. 394, 744 N.W.2d 479 (2008).

25-824.

A frivolous action is one in which a litigant asserts a legal position wholly without merit; that is, the position is without rational argument based on law and evidence to support the litigant's position. The term "frivolous" connotes an improper motive or legal position so wholly without merit as to be ridiculous. TFF, Inc. v. SID No. 59, 280 Neb. 767, 790 N.W.2d 427 (2010).

Any doubt about whether a legal position is frivolous or taken in bad faith should be resolved in favor of the one whose legal position is in question. TFF, Inc. v. SID No. 59, 280 Neb. 767, 790 N.W.2d 427 (2010).

An argument that a referendum vote repealing a statute was retroactive to the statute's effective date, where the Nebraska Supreme Court had previously held that the operation of the statute had not been suspended pending the referendum vote, was not frivolous. Haskell v. Madison Cty. Sch. Dist. No. 0001, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

An appeal from an order overruling a pretrial motion to dismiss was not frivolous and did not entitle the appellee to an award of attorney fees or costs where no prior Nebraska case had addressed the finality of such an order. Qwest Bus. Resources v. Headliners—1299 Farnam, 15 Neb. App. 405, 727 N.W.2d 724 (2007).

25-1056.

This section authorizes garnishments in aid of execution and, by incorporating other statutes, expressly authorizes assertion in garnishment proceedings of exemptions applicable to executions. ARL Credit Servs. v. Piper, 15 Neb. App. 811, 736 N.W.2d 771 (2007).

25-1111.

In order to obtain relief concerning oral instructions, the appellant must demonstrate that it was prejudiced by the trial court's actions. State v. McDaniel, 17 Neb. App. 725, 771 N.W.2d 173 (2009).

25-1115.

In order to obtain relief concerning oral instructions, the appellant must demonstrate that it was prejudiced by the trial court's actions. State v. McDaniel, 17 Neb. App. 725, 771 N.W.2d 173 (2009).

25-1148.

The method by which the State sought a continuance, although not ideal under the requirements of this section, was not in itself a sufficient basis for finding error in the granting of the continuance. State v. Shipler, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

25-1228.

There is no provision in this section for a court to compel a postdeposition reimbursement of fees. Bedore v. Ranch Oil Co., 282 Neb. 553, 805 N.W.2d 68 (2011).

25-1233.

Section 25-1708 provides no basis for taxing to a defendant in a civil action the costs of transporting a plaintiff who is an incarcerated person and who must be transported pursuant to this section. Jacob v. Schlichtman, 16 Neb. App. 783, 753 N.W.2d 361 (2008).

25-1301.

Pursuant to subsection (1) of this section, the content of a document, rather than the intention of the judge or any interpretation of a party, dictates whether the document constitutes the final determination of the rights of the parties, for purposes of appeal. Ferer v. Aaron Ferer & Sons Co., 16 Neb. App. 866, 755 N.W.2d 415 (2008).

This section sets forth two ministerial requirements for a final judgment: rendition of a judgment by the court making and signing a written notation of relief and entry of a judgment by the clerk of court placing a file stamp and date upon the judgment. Rosen Auto Leasing v. Jordan, 15 Neb. App. 1, 720 N.W.2d 911 (2006).

When a trial court order intended to finally dispose of a matter is announced but not rendered or entered pursuant to this section, but a party nonetheless files an otherwise timely notice of appeal, the appellate court has "potential jurisdiction" which "springs" into full jurisdiction when this section is complied with. Rosen Auto Leasing v. Jordan, 15 Neb. App. 1, 720 N.W.2d 911 (2006).

25-1315.

The policy behind subsection (1) of this section was the avoidance of piecemeal appellate review in routine cases, not the facilitation thereof. Halac v. Girton, 17 Neb. App. 505, 766 N.W.2d 418 (2009).

To be appealable in a case with multiple parties or causes of action, an order must satisfy the final order requirements of section 25-1902, as well as the requirements of subsection (1) of this section. Halac v. Girton, 17 Neb. App. 505, 766 N.W.2d 418 (2009).

A trial court's decision to certify a final judgment pursuant to subsection (1) of this section is reviewed for an abuse of discretion. Sand Livestock Sys. v. Svoboda, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

The power that subsection (1) of this section confers upon the trial judge should only be used in the infrequent harsh case as an instrument for the improved administration of justice, based on the likelihood of injustice or hardship to the parties of a delay in entering a final judgment as to part of the case. Sand Livestock Sys. v. Svoboda, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

The trial court did not abuse its discretion in making the certification under subsection (1) of this section, given that the length of time the litigation had been pending and the fact that a full jury trial had been brought to conclusion regarding the issues between certain parties, the case was the unusual case in which the costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket were outbalanced by pressing needs of the litigants for an early and separate judgment as to some claims or parties. Sand Livestock Sys. v. Svoboda, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

When a trial court concludes that entry of judgment under subsection (1) of this section is appropriate, it should ordinarily make specific findings setting forth the reasons for its order. Sand Livestock Sys. v. Svoboda, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

When certifying a judgment as final under subsection (1) of this section, a court must make specific findings and explain the reasoning for its determination. Murphy v. Brown, 15 Neb. App. 914, 738 N.W.2d 466 (2007).

In the absence of any express determination and express direction under subsection (1) of this section, an unresolved complaint in intervention caused the order sought to be appealed to be interlocutory. TierOne Bank v. Cup-O-Coa, Inc., 15 Neb. App. 648, 734 N.W.2d 763 (2007).

25-1329.

A letter that had been in the defendant's possession at all relevant times did not constitute newly discovered evidence for purposes of a motion to alter or amend the judgment. State v. Timmens, 282 Neb. 787, 805 N.W.2d 704 (2011).

In order to qualify for treatment as a motion to alter or amend the judgment, the motion must be filed no later than 10 days after the entry of judgment, as required under this section, and must seek substantive alteration of the judgment. Beckman v. McAndrew, 16 Neb. App. 217, 742 N.W.2d 778 (2007).

It was not an abuse of discretion for a trial court to grant a motion to alter or amend judgment where there was no new evidence adduced at a hearing on the motion and the effect of the action was to correctly reflect the original evidence. Russell v. Clarke, 15 Neb. App. 221, 724 N.W.2d 840 (2006).

25-1335.

A continuance authorized by this section is within the discretion of the trial court, whose ruling will not be disturbed on appeal in the absence of an abuse of discretion. King v. Burlington Northern Santa Fe Ry. Co., 16 Neb. App. 544, 746 N.W.2d 383 (2008).

25-1401.

As an element of a decedent's personal injury action, conscious pre-fatal-injury fear and apprehension of impending death survives a decedent's death, under the provisions of this section, and inures to the benefit of such decedent's estate. Scott v. Khan, 18 Neb. App. 600, 790 N.W.2d 9 (2010).

25-1552.

A judgment debtor may assert the in-lieu-of-homestead exemption, provided by this section, in response to a garnishment summons against the judgment debtor's bank account. ARL Credit Servs. v. Piper, 15 Neb. App. 811, 736 N.W.2d 771 (2007).

25-1708.

This section provides no basis for taxing to a defendant in a civil action the costs of transporting a plaintiff who is an incarcerated person and who must be transported pursuant to section 25-1233. Jacob v. Schlichtman, 16 Neb. App. 783, 753 N.W.2d 361 (2008).

In an equity action seeking declaratory judgment and injunction, the taxation of costs by the trial court to the plaintiff in whose favor judgment was entered was not an abuse of discretion. R & S Investments v. Auto Auctions, 15 Neb. App. 267, 725 N.W.2d 871 (2006).

25-1711.

The district court did not abuse its discretion in allocating costs between several parties. City of Falls City v. Nebraska Mun. Power Pool, 281 Neb. 230, 795 N.W.2d 256 (2011).

In an equity action seeking declaratory judgment and injunction, the taxation of costs by the trial court to the plaintiff in whose favor judgment was entered was not an abuse of discretion. R & S Investments v. Auto Auctions, 15 Neb. App. 267, 725 N.W.2d 871 (2006).

25-1901.

The discretion exercised by a county board of commissioners under sections 39-1722 and 39-1725 is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under this section. Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs., 17 Neb. App. 76, 758 N.W.2d 653 (2008).

25-1902.

A substantial right under this section is not affected when that right can be effectively vindicated in an appeal from the final judgment. In re Adoption of Amea R., 282 Neb. 751, 807 N.W.2d 736 (2011).

An order granting ancillary discovery of allegedly privileged information is not a final order under this section. Schropp Indus. v. Washington Cty. Atty.'s Ofc., 281 Neb. 152, 794 N.W.2d 685 (2011).

A probate court's denial of an application for the appointment of a special administrator, brought pursuant to section 30-2457(2), is a final, appealable order within the meaning of this section. In re Estate of Muncillo, 280 Neb. 669, 789 N.W.2d 37 (2010).

A proceeding's characterization does not hinge upon the remedy granted, because it cannot be both a special proceeding and a step within an action. Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010).

A stay in an independent special proceeding that is tantamount to a dismissal of an action or has the effect of a permanent denial of the requested relief is appealable as a final order. Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010).

An order compelling arbitration or staying judicial proceedings pending arbitration is a final order under the second category of this section. It affects a substantial right in an independent special proceeding because it disposes of all the issues presented. Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010).

Special proceedings include civil statutory remedies that are not encompassed in chapter 25 of the Nebraska Revised Statutes and sometimes statutory remedies within the civil procedure statutes. But regardless of a statutory remedy's location within Nebraska's statutes, actions and special proceedings are mutually exclusive. Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010).

An order denying a motion for in-chambers testimony in an adjudication proceeding is not a final order that is reviewable on appeal because a child does not have a substantial right to testify outside the presence of the parent. In re Interest of Marcella B. & Juan S., 18 Neb. App. 153, 775 N.W.2d 470 (2009).

An order denying a motion for in-chambers testimony in an adjudication proceeding is reviewable under the collateral order doctrine. In re Interest of Marcella B. & Juan S., 18 Neb. App. 153, 775 N.W.2d 470 (2009).

Where the issue of guardian ad litem fees has been raised and reserved for later determination, an order permanently modifying child custody but not resolving the issue of guardian ad litem fees is not a final, appealable order. McCaul v. McCaul, 17 Neb. App. 801, 771 N.W.2d 222 (2009).

To be appealable in a case with multiple parties or causes of action, an order must satisfy the final order requirements of this section, as well as the requirements of section 25-1315(1). Halac v. Girton, 17 Neb. App. 505, 766 N.W.2d 418 (2009).

An order imposing a money judgment for attorney fees and expenses for discovery violations pursuant to Neb. Ct. R. Disc. section 6-337(a)(4) does not affect a "substantial right" as required by this section. Frederick v. Seeba, 16 Neb. App. 373, 745 N.W.2d 342 (2008).

A court's decision to deny waiver of a 45-day jail term as a condition of probation was not a final, appealable order. State v. Volcek, 15 Neb. App. 416, 729 N.W.2d 90 (2007).

Sentencing orders in which a defendant is sentenced to probation with one term of probation's being a jail term that may or may not ultimately be waived by the court are final, appealable orders. State v. Volcek, 15 Neb. App. 416, 729 N.W.2d 90 (2007).

An order overruling a pretrial motion to dismiss pursuant to Neb. Ct. R. Pldg. section 6-1112(b)(1), (2), and (6) is not a final order. Qwest Bus. Resources v. Headliners—1299 Farnam, 15 Neb. App. 405, 727 N.W.2d 724 (2007).

An appeal based solely on an alleged violation of the constitutional right to a speedy trial can be effectively vindicated in an appeal after judgment. State v. Wilson, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

The denial of a motion for discharge, based upon a constitutional right to a speedy trial and in the absence of a nonfrivolous statutory claim, is interlocutory. State v. Wilson, 15 Neb. App. 212, 724 N.W.2d 99 (2006).

25-1912.

Subsection (2) of this section applies only to a notice of appeal filed after the announcement of a decision or final order, but before entry of judgment; it was not intended to validate anticipatory notices of appeal filed prior to the announcement of final judgment. Wright v. Omaha Pub. Sch. Dist., 280 Neb. 941, 791 N.W.2d 760 (2010).

Pursuant to subsection (2) of this section, a trial court's dismissal of one defendant did not announce a judgment, decree, or final order, so as to allow the plaintiff's premature notice of appeal to relate forward, since the trial court's order did not dispose of all claims against all of the parties in each of their capacities. Ferer v. Aaron Ferer & Sons Co., 16 Neb. App. 866, 755 N.W.2d 415 (2008).

Pursuant to subsection (3) of this section, in order to be a tolling motion, a motion to alter or amend must seek substantive alteration of the judgment. Gebhardt v. Gebhardt, 16 Neb. App. 565, 746 N.W.2d 707 (2008).

A motion to dismiss was a tolling motion under this section, and because a ruling on the motion was not announced prior to the filing of the notice of appeal, the notice of appeal was of no effect and the appellate court did not have jurisdiction to hear the appeal. Beckman v. McAndrew, 16 Neb. App. 217, 742 N.W.2d 778 (2007).

This section does not contain a "good faith" exception to the requirement of timely payment of the docket fee. In re Interest of Jesse D., 15 Neb. App. 534, 732 N.W.2d 694 (2007).

In order to initiate an appeal, a notice of appeal must be filed within 30 days after entry of the judgment, decree, or final order. State v. Murphy, 15 Neb. App. 398, 727 N.W.2d 730 (2007).

When a trial court's order intended to finally dispose of a matter is announced but not rendered or entered pursuant to section 25-1301, but a party nonetheless files an otherwise timely notice of appeal, the appellate court has "potential jurisdiction" which "springs" into full jurisdiction when section 25-1301 is complied with. Rosen Auto Leasing v. Jordan, 15 Neb. App. 1, 720 N.W.2d 911 (2006).

25-1916.

The trial court may in its discretion grant supersedeas in cases not specified in this section. Clark v. Tyrrell, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

25-1931.

Under rule that in a postconviction proceeding, an order granting an evidentiary hearing on some issues and denying a hearing on others is a final order, the appellate court lacked jurisdiction over claims dismissed in an order that also granted an evidentiary hearing, because no appeal was taken within 30 days from the date of the order. State v. Timmens, 282 Neb. 787, 805 N.W.2d 704 (2011).

25-2001.

Subsection (3) of this section, which allows for the correction of clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission by an order nunc pro tunc, does not authorize the district court to correct mistakes or errors made by a party or the party's attorney. Bevard v. Kelly, 15 Neb. App. 960, 739 N.W.2d 243 (2007).

25-2121.

The juvenile court, as a court of record, has the statutory authority pursuant to this section to punish contemptuous conduct by fine or imprisonment. In re Interest of Thomas M., 282 Neb. 316, 803 N.W.2d 46 (2011); Hofferber v. Hastings Utilities, 282 Neb. 215, 803 N.W.2d 1 (2011).

The Nebraska Workers' Compensation Court is a court of record. Hofferber v. Hastings Utilities, 282 Neb. 215, 803 N.W.2d 1 (2011).

This section permits a court of record to punish contempt by fine and imprisonment, but not by dismissal of a petition. Hofferber v. Hastings Utilities, 282 Neb. 215, 803 N.W.2d 1 (2011).

25-2164.

A motion for summary judgment is a proper procedural device in an action for a writ of mandamus. Russell v. Clarke, 15 Neb. App. 221, 724 N.W.2d 840 (2006).

25-21,185.11.

An employer covered by workers' compensation is not a "released person" within the meaning of this section. Unless the employer's negligence is the sole cause of the accident, or when combined with the plaintiff's negligence is the sole cause of the accident, the defendant may not argue the negligence of an immune employer. Downey v. Western Comm. College Area, 282 Neb 970, 808 N.W.2d 839 (2012).

The element of specific identification is only met when the reference in the release is so particular that a stranger can readily identify the released party and his or her identity is not in doubt. Podraza v. New Century Physicians of Neb., 280 Neb. 678, 789 N.W.2d 260 (2010).

There is a rebuttable presumption that a release benefits only those specifically designated; the unnamed party claiming under the release has the burden to show an actual intent to benefit him or her. Podraza v. New Century Physicians of Neb., 280 Neb. 678, 789 N.W.2d 260 (2010).

Under the intent rule, general releases which fail to specifically designate who is discharged either by name or by some other specific identifying terminology are inherently ambiguous, and the actual intent of the parties will govern. Podraza v. New Century Physicians of Neb., 280 Neb. 678, 789 N.W.2d 260 (2010).

25-21,243.

Under subsection (1) of this section, a trial court must first determine as a matter of law whether the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law. Sand Livestock Sys. v. Svoboda, 17 Neb. App. 28, 756 N.W.2d 299 (2008).

25-21,274.

This section does not displace the common-law elements of res ipsa loquitur and does not prevent a res ipsa loquitur jury instruction in appropriate circumstances; it simply clarifies that the fact of escaped livestock is, standing alone, insufficient to raise an inference of negligence. McLaughlin Freight Lines v. Gentrup, 281 Neb. 725, 798 N.W.2d 386 (2011).

25-2205.

This section requires the clerk of the trial court to file all documents delivered to him or her for that purpose. State v. Muse, 15 Neb. App. 13, 721 N.W.2d 661 (2006).

25-2206.

This section requires the clerk of the trial court to endorse the day of filing upon any document delivered to him or her for that purpose. State v. Muse, 15 Neb. App. 13, 721 N.W.2d 661 (2006).

25-2301.02.

A court may not immediately deny an application to proceed in forma pauperis on the ground the proposed complaint is illegible, as such does not fulfill the requirement of this section that the court find that the complaint was actually frivolous or malicious as a prerequisite to denying the application. Tyler v. Natvig, 17 Neb. App. 358, 762 N.W.2d 621 (2009).

25-2307.

A district court has jurisdiction to hear a motion for reimbursement of costs sought under this section, and an order entered thereon is appealable as a summary application in an action after judgment. State v. Patterson, 18 Neb. App. 255, 778 N.W.2d 756 (2010).

Neither this section nor Heathman v. Kenney, 263 Neb. 966, 644 N.W.2d 558 (2002), support a conclusion that a request for reimbursement of printing costs must be made during the pendency of the appeal. State v. Patterson, 18 Neb. App. 255, 778 N.W.2d 756 (2010).

The words "on appeal" in this section follow the requirement that a party be permitted to proceed in forma pauperis and precede the requirement that the county pay for printing of the appellate briefs; therefore, the logical interpretation is that the expense of printing of appellate briefs is to be reimbursed to a party who is allowed to proceed in forma pauperis on appeal. State v. Patterson, 18 Neb. App. 255, 778 N.W.2d 756 (2010).

25-2401.

Minor or isolated inaccuracies, omissions, interruptions, or other defects in translation are inevitable and do not warrant relief where the translation is on the whole reasonably timely, complete, and accurate, and the defects do not render the proceeding fundamentally unfair. Tapia-Reyes v. Excel Corp., 281 Neb. 15, 793 N.W.2d 319 (2011).

The requirement that an interpreter provide an accurate translation implicates a defendant's due process right to a fair trial as guaranteed by the Fifth Amendment, the ultimate question being whether the translator's performance has rendered the trial fundamentally unfair. Tapia-Reyes v. Excel Corp., 281 Neb. 15, 793 N.W.2d 319 (2011).

25-2602.01.

Under the federal McCarran-Ferguson Act, state law regulating the business of insurance controls over federal law that does not specifically govern insurance. Subsection (f)(4) of this section regulates the insurer-insured contractual relationship and, thus, the business of insurance. It is therefore not preempted by the Federal Arbitration Act. Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010).

Under the federal McCarran-Ferguson Act, subsection (f)(4) of this section is preempted by the Federal Crop Insurance Act and regulations thereunder that specifically relate to the business of insurance and require arbitration of disputes. Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010).

With specified exceptions, agreements to arbitrate future controversies concerning an insurance policy are invalid under subsection (f)(4) of this section, unless federal law preempts this provision. Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010).

25-2603.

Although this section specifies that the question of whether an agreement to arbitrate exists should be "summarily" tried, this section does not preclude the right to a jury trial in every circumstance. Omaha Cold Storage Terminals v. Patterson, 15 Neb. App. 548, 733 N.W.2d 219 (2007).

25-2606.

The lack of a formal notice of hearing in compliance with this section of the postponement of a hearing previously scheduled and correctly noticed did not invalidate an award where evidence supported the conclusion

that the parties to the arbitration had actual notice of the postponed hearing in advance. Damrow v. Murdoch, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

The trial court did not err in finding that lack of a formal notice under this section was an insufficient ground to vacate an arbitration award. Damrow v. Murdoch, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

25-2609.

The appellant waived an objection under this section where there was nothing in the record to support a conclusion that he notified the arbitrators of his objection prior to the delivery of the award. Damrow v. Murdoch, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

25-2612.

This section does not allow for the exercise of discretion by the court when a request of confirmation is made where there has been no application for vacation or modification. Drummond v. State Farm Mut. Auto. Ins. Co., 280 Neb. 258, 785 N.W.2d 829 (2010).

The appellees filed a motion under this section seeking to confirm an arbitration award. Damrow v. Murdoch, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

25-2613.

The trial court did not err in finding that lack of a formal notice under section 25-2606 was an insufficient ground to vacate an arbitration award. Damrow v. Murdoch, 15 Neb. App. 920, 739 N.W.2d 229 (2007).

25-2618.

Jurisdiction over confirmation of arbitration awards is conferred upon the district court, and the county court has no such jurisdiction. MBNA America Bank v. Hansen, 16 Neb. App. 536, 745 N.W.2d 609 (2008).

25-2620.

An order compelling arbitration or staying judicial proceedings pending arbitration is a final order under the second category of section 25-1902. It affects a substantial right in an independent special proceeding because it disposes of all the issues presented. Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010).

The list of appealable arbitration orders under this section is not exclusive. Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010).

25-2701.

As subsection (1) of this section makes clear, all provisions of the criminal and civil procedure code govern all actions in the county court. State v. Lebeau, 280 Neb. 238, 784 N.W.2d 921 (2010).

This section applies to the prosecution of city ordinances. State v. Lebeau, 280 Neb. 238, 784 N.W.2d 921 (2010).

25-2729.

A journal entry signed by the judge and filed is all that subsection (3) of this section required for a final order filed in 1998; a file stamp was not required. State v. Solomon, 16 Neb. App. 368, 744 N.W.2d 475 (2008).

When a trial court order intended to finally dispose of a matter is announced but not rendered or entered pursuant to section 25-1301, but a party nonetheless files an otherwise timely notice of appeal, the appellate court has "potential jurisdiction" which "springs" into full jurisdiction when section 25-1301 is complied with. Rosen Auto Leasing v. Jordan, 15 Neb. App. 1, 720 N.W.2d 911 (2006).

25-2740.

In the exercise of its jurisdiction over a custody modification proceeding, a county court sitting as a juvenile court cannot permanently modify child custody through the mere adoption of a case plan pursuant to section 43-285(2). In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

This section, combined with sections 24-517 and 43-247, vests juvenile courts and county courts sitting as juvenile courts with jurisdiction over a custody modification proceeding if the court already has jurisdiction over the juvenile under a separate provision of section 43-247. In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

27-103.

An exhibit offered at trial but not received by the trial court is required to be included in the record in order to allow an appellate court—where an alleged error in refusing to receive the exhibit is properly raised in an appeal—to effectively review the court's decision. Dinges v. Dinges, 16 Neb. App. 275, 743 N.W.2d 662 (2008).

27-303.

When a trial court instructs a jury on an inference regarding a specific fact or set of facts, the instruction must specifically include a statement explaining to the jury that it may regard the basic facts as sufficient evidence of the inferred fact, but that it is not required to do so; the instruction must also explain that the existence of the inferred facts must, on all the evidence, be proved beyond a reasonable doubt. State v. Taylor, 282 Neb. 297, 803 N.W.2d 746 (2011).

27-401.

The exercise of judicial discretion is implicit in determinations of relevancy under this section and prejudice under section 27-403, and a trial court's decision under these evidentiary rules will not be reversed absent an abuse of discretion. State v. Schmidt, 16 Neb. App. 741, 750 N.W.2d 390 (2008); State v. Kuhl, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

27-403.

Most, if not all, evidence offered by a party is calculated to be prejudicial to the opposing party; only evidence tending to suggest a decision on an improper basis is unfairly prejudicial. State v. Pullens, 281 Neb. 828, 800 N.W.2d 202 (2011).

Generally, the State may choose its evidence: The prosecutor's choice will generally survive an analysis pursuant to this section when a defendant seeks to force the substitution of an admission for evidence creating a coherent narrative of his thoughts and actions in perpetrating the offense for which he is being tried. State v. McDaniel, 17 Neb. App. 725, 771 N.W.2d 173 (2009).

In an incest case, the court did not abuse its discretion in allowing evidence of sexual activity occurring between the defendant and his daughter before they moved to Nebraska and evidence that the defendant could not be excluded as the father of his daughter's child. State v. Aguilar-Moreno, 17 Neb. App. 623, 769 N.W.2d 784 (2009).

The exercise of judicial discretion is implicit in determinations of relevancy under section 27-401 and prejudice under this section, and a trial court's decision under these evidentiary rules will not be reversed absent an abuse of discretion. State v. Schmidt, 16 Neb. App. 741, 750 N.W.2d 390 (2008); State v. Kuhl, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

27-404.

Evidence of prior crimes was not so similar, unusual, or distinctive so as to support its independent relevance on the issue of identity and was inadmissible. State v. Glazebrook, 282 Neb. 412, 803 N.W.2d 767 (2011).

Pursuant to subsection (2) of this section, where there are an overwhelming number of significant similarities between the other crime and the charged offense or offenses, the evidence of the other crime may be admitted, and any dissimilarities merely go to the weight of the evidence. State v. Pullens, 281 Neb. 828, 800 N.W.2d 202 (2011).

Pursuant to subsection (2) of this section, while remoteness in time may weaken the value of prior bad acts evidence, such remoteness does not, in and of itself, necessarily justify exclusion of that evidence. State v. Pullens, 281 Neb. 828, 800 N.W.2d 202 (2011).

Subsection (2) of this section prohibits the admissibility of relevant evidence for the purpose of proving the character of a person in order to show that he or she acted in conformity therewith; or, stated another way, the rule prohibits the admission of other bad acts evidence for the purpose of demonstrating a person's propensity to act in a certain manner. State v. Ellis, 281 Neb. 571, 799 N.W.2d 267 (2011).

Bad acts that form the factual setting of the crime in issue or that form an integral part of the crime charged are not subject to this section. State v. Baker, 280 Neb. 752, 789 N.W.2d 702 (2010).

Evidence can be properly admitted to explain the victim's failure to make a prompt complaint. State v. Baker, 280 Neb. 752, 789 N.W.2d 702 (2010).

An appellate court's analysis under subsection (2) of this section considers (1) whether the evidence was relevant for some purpose other than to prove the character of a person to show that he or she acted in conformity therewith, (2) whether the probative value of the evidence is substantially outweighed by its potential for unfair prejudice, and (3) whether the trial court, if requested, instructed the jury to consider the evidence only for the limited purpose for which it was admitted. State v. Sutton, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

Evidence of other bad acts falls into two categories under subsection (2) of this section, according to the basis of the relevance of the acts: (1) evidence which is relevant only to show propensity, which is not admissible, and (2) otherwise relevant (nonpropensity) evidence, which is admissible. State v. Sutton, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

Evidence of other crimes which is relevant for any purpose other than to show the actor's propensity is admissible under subsection (2) of this section. State v. Sutton, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

Subsection (2) of this section prohibits the admission of evidence of other bad acts for the purpose of demonstrating a person's propensity to act in a certain manner. State v. Sutton, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

The admissibility of evidence under subsection (2) of this section must be determined upon the facts of each case and is within the discretion of the trial court. State v. Sutton, 16 Neb. App. 185, 741 N.W.2d 713 (2007).

27-607.

Under this section, the credibility of a witness may be attacked by any party, including the party calling the witness. A party may not, however, use the rule as an artifice for putting before the jury substantive evidence that is otherwise inadmissible. But evidence of a witness' bias, however, is substantive evidence that a party can present on direct or cross-examination. State v. Iromuanya, 282 Neb. 798, 806 N.W.2d 404 (2011).

27-608.

Subsection (2) of this section does not prohibit inquiry into specific instances of a witness' conduct; it only prohibits proof of that conduct by extrinsic evidence. State v. Baker, 280 Neb. 752, 789 N.W.2d 702 (2010).

27-609.

While this section clearly allows a witness' credibility to be attacked with previous convictions, this section does not include pending charges. State v. White, 15 Neb. App. 486, 732 N.W.2d 677 (2007).

27-702.

A medical expert's testimony concerning causes of the plaintiff's multiple myeloma was properly excluded. King v. Burlington Northern Santa Fe Ry. Co., 16 Neb. App. 544, 746 N.W.2d 383 (2008).

A trial court adequately demonstrates that it has performed its gatekeeping duty in determining the reliability of expert testimony when the record shows (1) the court's conclusion whether the expert's opinion is admissible and (2) the reasoning the court used to reach that conclusion, specifically noting the factors bearing on reliability that the court relied on in reaching its determination. Kirkwood v. State, 16 Neb. App. 459, 748 N.W.2d 83 (2008).

No analysis pursuant to Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), is necessary where the party asserting error does not challenge the scientific validity and reliability of the guidelines set forth in the Manual on Uniform Traffic Control Devices. Kirkwood v. State, 16 Neb. App. 459, 748 N.W.2d 83 (2008).

27-703.

When an assumption used by an expert is not proved untrue or to be without any basis in fact, whether the stated grounds for the assumption are credible is a jury question. Gary's Implement v. Bridgeport Tractor Parts, 281 Neb. 281, 799 N.W.2d 249 (2011).

27-801.

A statement offered to prove its impact on the listener, instead of its truth, is offered for a valid nonhearsay purpose if the listener's knowledge, belief, response, or state of mind after hearing the statement is relevant to an issue in the case. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

A verbal act is a statement that has legal significance, i.e., it brings about a legal consequence simply because it was spoken. A nonhearsay purpose for offering a statement exists when a statement has legal significance because it was spoken, independent of the truth of the matter asserted. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

Apart from statements falling under the definitional exclusions and statutory exceptions, the admissibility of an out-of-court statement depends upon whether the statement is offered for one or more recognized nonhearsay purposes relevant to an issue in the case. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

Under subsection (3) of this section, a witness' previous out-of-court statements are inadmissible hearsay if they are offered for the truth of the matter asserted and do not fall within a definitional exclusion under subsection (4)(a) or a statutory exception. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

When overruling a hearsay objection on the ground that testimony about an out-of-court statement is received not for its truth but only to prove that the statement was made, a trial court should identify the specific nonhearsay purpose for which the making of the statement is relevant and probative. State v. Baker, 280 Neb. 752, 789 N.W.2d 702 (2010).

27-803.

For purposes of the excited utterance exception to the hearsay rule found in subsection (1) of this section, in making a preliminary determination that a shocking or startling event has taken place, a trial judge may consider hearsay evidence which itself fails to satisfy any exception. State v. Pullens, 281 Neb. 828, 800 N.W.2d 202 (2011).

27-804.

Statements made during plea negotiations are not against penal interest when the defendant is told the statements will not be used against him or her in any form. State v. McGee, 282 Neb. 387, 803 N.W.2d 497 (2011).

Pursuant to subsection (2) of this section, an alleged verbal cancellation or discharge of a promissory note cannot be said to be against a decedent's pecuniary interest, because there was no evidence of discharge by one of the physical acts, as detailed in Uniform Commercial Code section 3-604(a)(i), nor was there a signed writing, as detailed in section 3-604(a)(ii), offered or received into evidence which purported to discharge the debt owed to the decedent. Haynes v. Dover, 17 Neb. App. 640, 768 N.W.2d 140 (2009).

27-901.

A proponent of evidence is not required to conclusively prove the genuineness of the evidence or to rule out all possibilities inconsistent with authenticity; if the proponent's showing is sufficient to support a finding that the evidence is what it purports to be, the proponent has satisfied the requirement of the authentication rule. State v. Taylor, 282 Neb. 297, 803 N.W.2d 746 (2011).

Pursuant to subsection (1) of this section, the possibility of an alteration or misuse by another of an e-mail address generally goes to weight, not admissibility. State v. Pullens, 281 Neb. 828, 800 N.W.2d 202 (2011).

27-1101.

Preliminary examinations or hearings in criminal cases are exempt from application of the evidence rules under subsection (4)(b) of this section. State v. Peterson, 280 Neb. 641, 788 N.W.2d 560 (2010).

28-105.

A defendant found guilty of a Class III felony does not have an equal protection right to a Specialized Substance Abuse Supervision evaluation when such defendant fails to show that he was similarly situated to felony drug offenders who were eligible for the program. State v. Borges, 18 Neb. App. 322, 791 N.W.2d 336 (2010).

The geographic limitations on the Specialized Substance Abuse Supervision program do not violate the Equal Protection Clause because the program is rationally related to the State's interests. State v. Borges, 18 Neb. App. 322, 791 N.W.2d 336 (2010).

28-109.

The trial court did not err in declining to use the defendant's proposed jury instruction defining "recklessly" which mirrored the language of subsection (19) of this section where trial court gave pattern jury instruction definition of "reckless." State v. Walls, 17 Neb. App. 90, 756 N.W.2d 542 (2008).

28-206.

Aiding and abetting is not a separate crime in Nebraska. Rather, it is another theory for holding one liable for the underlying crime. State v. Dixon, 282 Neb. 274, 802 N.W.2d 866 (2011).

28-305.

An intentional killing committed without malice upon a "sudden quarrel," as that term is defined by our jurisprudence, constitutes the offense of manslaughter. State v. Smith, 282 Neb. 720, 806 N.W.2d 383 (2011).

28-306.

Misdemeanor motor vehicle homicide is a public welfare offense which does not require proof of mens rea. State v. Perina, 282 Neb. 463, 804 N.W.2d 164 (2011).

A conviction for motor vehicle homicide by reckless/willful reckless driving does not give the sentencing court any authority to order a driver's license revocation. State v. Andersen, 16 Neb. App. 651, 748 N.W.2d 124 (2008).

28-310.

Third degree assault is a lesser-included offense of assault by a confined person, because the elements of the two offenses are identical, except that the greater offense, assault by a confined person, requires the assault to be committed by someone who is legally confined. State v. McKay, 15 Neb. App. 169, 723 N.W.2d 644 (2006).

28-311.01.

A defendant does not have to actually commit a crime of violence, because it is the threat of violence which is at the heart of the crime of terroristic threats. State v. Tucker, 17 Neb. App. 487, 764 N.W.2d 137 (2009).

For purposes of the offense of terroristic threats, a threat may be written, oral, physical, or any combination thereof. State v. Tucker, 17 Neb. App. 487, 764 N.W.2d 137 (2009).

28-311.09.

Pursuant to subsection (8) of this section, personal service is an element of the misdemeanor crime of violating a harassment protection order. State v. Graff, 282 Neb. 746, 810 N.W.2d 140 (2011).

28-319.

First degree sexual assault under subsection (1)(a) of this section is a general intent crime. State v. Sutton, 16 Neb. App. 287, 741 N.W.2d 713 (2008).

28-320.02.

Under the former law, a person was guilty of a Class IIIA felony where a person knowingly solicits, coaxes, entices, or lures (1) a child 16 years of age or younger or (2) a peace officer who is believed by such person to be a child 16 years of age or younger, by means of a computer as that term is defined in section 28-1343, to engage in a sexual act. State v. Atchison, 15 Neb. App. 422, 730 N.W.2d 115 (2007).

28-323.

Pursuant to this section, the defendant and the victim were in a dating relationship and the victim was the defendant's "intimate partner," where their relationship began as casual or social, but progressed into a more

serious relationship, their families considered them to be dating and each other's girlfriend or boyfriend, and the altercation was precipitated by the victim's concerns that the defendant was cheating on her by dating other girls. State v. Gay, 18 Neb. App. 163, 778 N.W.2d 494 (2009).

28-507.

Unless the State limits its burglary prosecution to establishing that the defendant intended to steal property, the State must specify which felony or felonies it believes the defendant intended to commit after the breaking and entering. State v. Nero, 281 Neb. 680, 798 N.W.2d 597 (2011).

28-517.

In a prosecution for receiving stolen property, the court must instruct the jury on the subjective standard of "knowing . . . or believing" as it is used in this section. State v. Almasaudi, 282 Neb. 162, 802 N.W.2d 110 (2011).

This section imposes a subjective standard of knowledge or belief. State v. Almasaudi, 282 Neb. 162, 802 N.W.2d 110 (2011).

28-518.

Subsection (8) of this section requires only that some value be proved as an element of a theft offense, not that a particular threshold value be proved as an element of the offense. State v. Almasaudi, 282 Neb. 162, 802 N.W.2d 110 (2011).

In reference to the crime of theft, value is established by evidence concerning the price at which property identical or reasonably similar to the property stolen is offered for sale and sold in proximity to the site of the theft. State v. Connor, 16 Neb. App. 871, 754 N.W.2d 774 (2008).

28-521.

In a trespass prosecution, a defendant may introduce evidence that an owner or other person empowered to license access to the property told the defendant that he or she could be on the property. Such statements are verbal acts, i.e., nonhearsay statements, because they have legal significance merely because they were spoken. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

28-522.

A valid license from any owner or other person empowered to license access to a property is sufficient to show that a defendant reasonably believed that he or she was licensed to be on the premises. A defendant need not show that every owner licensed his or her presence. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

28-703.

Incest of an adult is not a registrable offense under the Sex Offender Registration Act. State v. Aguilar-Moreno, 17 Neb. App. 623, 769 N.W.2d 784 (2009).

28-833.

This section is not overbroad and thus, does not violate the First Amendment. State v. Kass, 281 Neb. 892, 799 N.W.2d 680 (2011).

This section proscribes a person age 19 or older from knowingly and intentionally using an electronic communication device to contact a child under age 16, or peace officer whom the person believes to be a child under age 16, and using language that conjures up repugnant sexual images. State v. Kass, 281 Neb. 892, 799 N.W.2d 680 (2011).

28-901.

The defendant's cleaning of a campsite and removal of alcohol containers were physical acts contemplated by the plain language of this section. State v. Stolen, 16 Neb. App. 121, 741 N.W.2d 168 (2007).

28-932.

Third degree assault is a lesser-included offense of assault by a confined person, because the elements of the two offenses are identical, except that the greater offense, assault by a confined person, requires the assault to be committed by someone who is legally confined. State v. McKay, 15 Neb. App. 169, 723 N.W.2d 644 (2006).

To prove legal confinement under this section, the State is required to prove only that the defendant was technically in the custody of law enforcement, not that the defendant was substantively confined in a lawful manner. State v. McKay, 15 Neb. App. 169, 723 N.W.2d 644 (2006).

28-1009.

Under section 28-1019, if a person is convicted of a Class IV felony under this section, the sentencing court shall order such person not to own, possess, or reside with any animal for at least 5 years and no more than 15 years after the date of conviction. State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011).

Under subsection (1) of this section, a person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor, unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony. State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011).

28-1019.

If a person is convicted of a Class IV felony under section 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least 5 years and no more than 15 years after the date of conviction. State v. Meduna, 18 Neb. App. 818, 794 N.W.2d 160 (2011).

28-1101.

The language of this section, strictly construed, simply and plainly asserts that an activity is gambling in Nebraska if its outcome is predominantly caused by chance. American Amusements Co. v. Nebraska Dept. of Rev., 282 Neb. 908, 807 N.W.2d 492 (2011).

28-1205.

The trial court's sentencing arrangement ordering consecutive sentences for the second robbery and use of a deadly weapon convictions to be served concurrently with the first sentences for robbery and use of a deadly weapon convictions constituted plain error because it had the effect of making one of the sentences for use of a deadly weapon run concurrently with the other sentence for use of a deadly weapon. State v. Schnell, 17 Neb. App. 211, 757 N.W.2d 732 (2008).

28-1322.

The State cannot constitutionally criminalize speech under this section solely because it inflicts emotional injury, annoys, offends, or angers another person. But speech can be criminalized under this section if it tends to or is likely to provoke violent reaction. State v. Drahota, 280 Neb. 627, 788 N.W.2d 796 (2010).

28-1343.

Under the former law, a person was guilty of a Class IIIA felony where a person knowingly solicits, coaxes, entices, or lures (1) a child 16 years of age or younger or (2) a peace officer who is believed by such person to be a child 16 years of age or younger, by means of a computer as that term is defined in this section, to engage in a sexual act. State v. Atchison, 15 Neb. App. 422, 730 N.W.2d 115 (2007).

28-1409.

A defendant's use of deadly force in self-defense is justified if a reasonable ground existed under the circumstances for the defendant's belief that he or she was threatened with death or serious bodily harm, even if the defendant was actually mistaken about the extent of the danger. State v. Miller, 281 Neb. 343, 798 N.W.2d 827 (2011).

29-1207.

A "proceeding" within the meaning of subsection (4)(a) of this section is an application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object. State v. Tamayo, 280 Neb. 836, 791 N.W.2d 152 (2010).

An "examination and hearing on competency" within the meaning of subsection (4)(a) of this section is the well-defined statutory procedure for determining competency to stand trial established by section 29-1823. State v. Tamayo, 280 Neb. 836, 791 N.W.2d 152 (2010).

"Misdemeanor offense involving intimate partners," within the meaning of subsection (2) of this section, does not encompass any and all misdemeanors in which intimate partners may be engaged. Rather, the exception applies only to those misdemeanor offenses in which the involvement of an "intimate partner" is an element of the offense. State v. Lebeau, 280 Neb. 238, 784 N.W.2d 921 (2010).

Final disposition under subsection (4)(a) of this section occurs on the date the defendant's motion is granted or denied. State v. Curry, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

In a speedy trial analysis under subsection (4)(a) of this section, the excludable period commences on the day immediately after the filing of a defendant's pretrial motion. State v. Curry, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

The State has the burden of proving that one or more of the excluded periods of time under subsection (4) of this section are applicable if the defendant is not tried within 6 months of the filing of the information in a criminal action. State v. Curry, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

To calculate the time for speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section to determine the last day the defendant can be tried. State v. Curry, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

Under subsection (4) of this section, it is presumed that a delay in hearing defense pretrial motions is attributable to the defendant unless the record affirmatively indicates otherwise. State v. Curry, 18 Neb. App. 284, 790 N.W.2d 441 (2010).

When a nonlawyer makes a motion for continuance made on behalf of a defendant in a criminal case, such motion constitutes a nullity and cannot form the basis for an exclusion from the speedy trial calculation under subsection (4)(b) of this section. State v. Craven, 17 Neb. App. 127, 757 N.W.2d 132 (2008).

The burden of proof is upon the State to show that one or more of the excluded time periods under subsection (4) of this section is applicable when the defendant is not tried within 6 months. State v. Shipler, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

This section requires discharge of a defendant whose case has not been tried within 6 months after the filing of the information, unless the 6 months are extended by any period to be excluded in computing the time for trial. State v. Shipler, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

To calculate the time for speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section to determine the last day the defendant can be tried. State v. Shipler, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

Where the period of delay sought by the State's motion fell under the period specifically enumerated in subsection (4)(c)(i) of this section, that was the applicable subsection for purposes of speedy trial analysis. State v. Shipler, 17 Neb. App. 66, 758 N.W.2d 41 (2008).

A plea agreement not entered into on the record before any court or tribunal, but, rather, made during private negotiations between the parties, is not a "proceeding" within the meaning of subsection (4)(a) of this section. State v. Vasquez, 16 Neb. App. 406, 744 N.W.2d 500 (2008).

Where the defendant appeared without the private counsel that he had earlier informed the court he intended to retain and the trial court appointed a public defender and suddenly announced that it was continuing the matter, the resulting delay was properly excluded under subsection (4)(f) of this section rather than (4)(b), because the record did not show that the postponement was granted at the defendant's request or with his consent. State v. Craig, 15 Neb. App. 836, 739 N.W.2d 206 (2007).

29-1418.

This section requires the clerk of the trial court to endorse upon an indictment the date of its filing and to enter the case upon the docket. State v. Muse, 15 Neb. App. 13, 721 N.W.2d 661 (2006).

29-1817.

Driving while under the influence of alcohol and refusal to submit to a chemical test are not the same offense for double jeopardy purposes, and double jeopardy does not prohibit the State from prosecuting the two offenses in a single prosecution. State v. Grizzle, 18 Neb. App. 48, 774 N.W.2d 634 (2009).

The defendant's claim that he was being subjected to multiple punishments for the same offense was unripe because he had pled guilty to one offense but had not been tried or convicted of the other offense. State v. Grizzle, 18 Neb. App. 48, 774 N.W.2d 634 (2009).

29-1819.02.

Under this section, all a defendant must show before withdrawing a plea of guilty or nolo contendere is (1) that the trial court failed to warn the defendant of one of the listed consequences and (2) that the defendant is currently facing one of the omitted consequences. State v. Mena-Rivera, 280 Neb. 948, 791 N.W.2d 613 (2010).

The defendant was properly advised under this section where advisement was not given verbatim but only minor, inconsequential wording changes were used in giving advisement as to immigration consequences of the defendant's plea. State v. Molina-Navarrete, 15 Neb. App. 966, 739 N.W.2d 771 (2007).

29-1823.

An individual has a constitutional right not to be put to trial when lacking mental competency, and this includes sentencing. State v. Hessler, 282 Neb. 935, 807 N.W.2d 504 (2011).

An "examination and hearing on competency" within the meaning of section 29-1207(4)(a) is the well-defined statutory procedure for determining competency to stand trial established by this section. State v. Tamayo, 280 Neb. 836, 791 N.W.2d 152 (2010).

29-1912.

A protective order limiting the defendant's and defense counsel's access to sensitive items in a sexual assault on a child case was properly granted. State v. Lovette, 15 Neb. App. 590, 733 N.W.2d 567 (2007).

29-1914.

In a driving under the influence case, where the record clearly showed that a computer source code for a breath-testing machine was not in the State's possession and that the manufacturer of the machine considered the source code a trade secret and proprietary information, the source code was not discoverable under this section. State v. Kuhl, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

29-1915.

A protective order limiting the defendant's and defense counsel's access to sensitive items in a sexual assault on a child case was properly granted. State v. Lovette, 15 Neb. App. 590, 733 N.W.2d 567 (2007).

29-2006.

A court cannot determine whether a juror should be challenged for cause in accordance with subsection (3) of this section without advising a juror of the possible punishments and asking the juror his or her opinion on capital punishment. State v. Sandoval, 280 Neb. 309, 788 N.W.2d 172 (2010).

Subsection (3) of this section allows courts to question jurors about their beliefs regarding the death penalty. State v. Sandoval, 280 Neb. 309, 788 N.W.2d 172 (2010).

29-2022.

A defendant waives his or her right under this section to have the jury kept together by failing to object to the jury's separation, overruling *State v. Robbins,* 205 Neb. 226, 287 N.W.2d 55 (1980). State v. Collins, 281 Neb. 927, 799 N.W.2d 693 (2011).

29-2028.

An appellate court concluded that uncorroborated testimony would be sufficient to convict a defendant of sexual assault as defined in sections 28-319 to 28-320.01 in any case wherein the fact finder determined that such testimony was sufficient evidence of guilt beyond a reasonable doubt. State v. Luff, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

A jury instruction was found to be a correct statement of the law under this section. The instructions, when taken together, advised the jury that while corroboration of the victim's testimony was not required, corroboration, or the lack thereof, could be considered by the jury in determining the weight to be given to the testimony, although the concurring opinion cautioned against routinely giving instruction at issue in this case. State v. Schmidt, 16 Neb. App. 741, 750 N.W.2d 390 (2008).

29-2101.

Pursuant to section 29-2103(4), a motion for new trial based on newly discovered evidence under subsection (5) of this section must be filed within 3 years of the date of the verdict. State v. Luff, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

Pursuant to subsection (5) of this section, a new trial may be granted when a defendant produces newly discovered evidence which he or she could not with reasonable diligence have discovered and produced at trial. State v. Luff, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

29-2103.

Pursuant to subsection (4) of this section, a motion for new trial based on newly discovered evidence under section 29-2101(5) must be filed within 3 years of the date of the verdict. State v. Luff, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

Pursuant to subsection (4) of this section, the appellate court was without jurisdiction to consider the assignment of error relating to the denial of a motion for new trial in a reinstated direct appeal, where only the direct appeal was reinstated and the defendant did not timely file a notice of appeal following the denial of his motion for new trial based on newly discovered evidence. State v. Luff, 18 Neb. App. 422, 783 N.W.2d 625 (2010).

29-2204.

There is no statutory requirement that a sentence for either a Class II or a Class III felony have a minimum term less than the maximum term. State v. Tucker, 17 Neb. App. 487, 764 N.W.2d 137 (2009).

29-2221.

"Good time" under section 83-1,108 should not be applied against a mandatory minimum sentence imposed under subsection (1) of this section. Hurbenca v. Nebraska Dept. of Corr. Servs., 16 Neb. App. 222, 742 N.W.2d 773 (2007).

29-2262.

A court may revoke a defendant's driver's license as a condition of probation if it is reasonably related to a defendant's rehabilitation. State v. Becker, 282 Neb. 449, 804 N.W.2d 27 (2011).

Pursuant to subsection (2)(b) of this section, the mandate of section 60-6,197.03(6) that an order of probation "shall also include" 60 days' confinement does not conflict with the provision that a trial court may require the offender to be confined for a period not to exceed 180 days; the minimum jail term for a period granted probation for an offense punishable under section 60-6,197.03(6) is 60 days, and the maximum is 180 days. State v. Dinslage, 280 Neb. 659, 789 N.W.2d 29 (2010).

A condition of probation requiring a defendant to pay child support toward arrearages when child support is unrelated to the defendant's conviction is authorized by subsection (2)(c) of this section. State v. McCrimon, 15 Neb. App. 452, 729 N.W.2d 682 (2007).

29-2263.

A trial court was not authorized to sentence a defendant for a "second offense misdemeanor" under subsection (1) of this section, even though the defendant, convicted of misdemeanor offense, had committed a number of prior misdemeanors, where the charge against the defendant did not specify "second offense." State v. Mlynarik, 16 Neb. App. 324, 743 N.W.2d 778 (2008).

29-2267.

The minimal standard of proof under the Due Process Clause in the case of violations of probation is a preponderance of the evidence. State v. Shambley, 281 Neb. 317, 795 N.W.2d 884 (2011).

29-2315.01.

A judgment entered during the pendency of a criminal cause is final when no further action is required to completely dispose of the cause pending. State v. Penado, 282 Neb. 495, 804 N.W.2d 160 (2011).

In the absence of specific statutory authorization, the State, as a general rule, has no right to appeal an adverse ruling in a criminal case. State v. Penado, 282 Neb. 495, 804 N.W.2d 160 (2011).

The test of finality of an order or judgment for the purpose of appeal is whether the particular proceeding or action was terminated by the order or judgment. State v. Penado, 282 Neb. 495, 804 N.W.2d 160 (2011).

This section grants the State the right to seek appellate review of adverse criminal rulings and specifies the special procedure by which to obtain such review. State v. Penado, 282 Neb. 495, 804 N.W.2d 160 (2011).

29-2317.

The plain language of section 43-2,106.01(2)(d) carves out an exception for delinquency cases in which jeopardy has attached. In such cases, the county attorney is limited to taking exception pursuant to the procedures of this section and sections 29-2318 and 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

This section requires exception to a county court judgment to be taken to the district court sitting as an appellate court. Specifically, the prosecuting attorney is to file a notice of appeal in the county court, then file the notice in the district court within 30 days. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Under section 43-2,106.01(2)(d), when a county attorney files an appeal "in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy," the appeal must be taken by exception proceedings to the district court pursuant to this section and sections 29-2318 and 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

29-2318.

The plain language of section 43-2,106.01(2)(d) carves out an exception for delinquency cases in which jeopardy has attached. In such cases, the county attorney is limited to taking exception pursuant to the procedures of this section and sections 29-2317 and 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Under section 43-2,106.01(2)(d), when a county attorney files an appeal "in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy," the appeal must be taken by exception proceedings to the district court pursuant to this section and sections 29-2317 and 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

29-2319.

The plain language of section 43-2,106.01(2)(d) carves out an exception for delinquency cases in which jeopardy has attached. In such cases, the county attorney is limited to taking exception pursuant to the procedures

of this section and sections 29-2317 and 29-2318. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Under section 43-2,106.01(2)(d), when a county attorney files an appeal "in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy," the appeal must be taken by exception proceedings to the district court pursuant to this section and sections 29-2317 and 29-2318. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

29-2320.

The State, by agreeing to remain silent at a defendant's sentencing hearing as part of a plea bargain, does not waive its statutory right to appeal a sentence as excessively lenient. State v. Thompson, 15 Neb. App. 764, 735 N.W.2d 818 (2007).

Waiver of the right to appeal a sentence must be express and unambiguous. State v. Thompson, 15 Neb. App. 764, 735 N.W.2d 818 (2007).

29-2322.

This section provides that an appellate court, upon a review of the record, shall determine whether a sentence imposed is excessively lenient, having regard for (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence imposed (a) to afford adequate deterrence to criminal conduct; (b) to protect the public from further crimes of the defendant; (c) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; and (d) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and (4) any other matters appearing in the record which the appellate court deems pertinent. State v. Hatt, 16 Neb. App. 397, 744 N.W.2d 493 (2008).

29-2323.

In a driving under the influence case, the appellate court found the sentence imposed by the trial court to be excessive, and, under this section, vacated the sentence and remanded the cause to the trial court for imposition of a greater sentence. State v. Hatt, 16 Neb. App. 397, 744 N.W.2d 493 (2008).

29-2522.

The balancing of aggravating circumstances against mitigating circumstances in deciding whether to impose the death penalty is not merely a matter of number counting, but, rather, requires a careful weighing and examination of the various factors. State v. Sandoval, 280 Neb. 309, 788 N.W.2d 172 (2010).

29-2523.

For purposes of subsection (2)(c) of this section, "extreme" means that the mental or emotional disturbance must be existing in the highest or the greatest possible degree, very great, intense, or most severe. State v. Ellis, 281 Neb. 571, 799 N.W.2d 267 (2011).

The fact that a defendant has some sort of mental illness or defect does not by itself establish that the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication. State v. Ellis, 281 Neb. 571, 799 N.W.2d 267 (2011).

"Mental anguish" is not a component of the aggravating circumstances included in subsection (1) of this section, and its use is disapproved. State v. Sandoval, 280 Neb. 309, 788 N.W.2d 172 (2010).

29-3001.

The power to grant a new direct appeal is implicit in this section, and the district court has jurisdiction to exercise such a power where the evidence establishes a denial or infringement of the right to effective assistance of counsel at the direct appeal stage of the criminal proceedings. State v. Murphy, 15 Neb. App. 398, 727 N.W.2d 730 (2007).

29-3523.

Under subsection (2)(c) of this section, which requires that the notation of a person's arrest be removed from the record if the charges are later dismissed, the person arrested may file a petition seeking to enforce his or her right to have his or her record expunged. State v. Blair, 17 Neb. App. 611, 767 N.W.2d 143 (2009).

29-4003.

Before determining that a defendant convicted of a crime not sexual in nature is subject to sex offender registration pursuant to subsection (1)(b)(i)(B) of this section, the court must provide notice and a hearing and must make the finding whether sexual penetration or sexual contact occurred in connection with the incident that gave rise to the conviction based on the record and the hearing. State v. Norman, 282 Neb. 990, 808 N.W.2d 48 (2012).

Subsection (1)(b)(i)(B) of this section provides that the court's finding shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report. However, the statute does not limit the court's consideration to such sources and, because a liberty interest is at stake, a meaningful hearing requires consideration of evidence at the hearing as well as the factual basis and the presentence report. State v. Norman, 282 Neb. 990, 808 N.W.2d 48 (2012).

The finding required under subsection (1)(b)(i)(B) of this section should be established by clear and convincing evidence. State v. Norman, 282 Neb. 990, 808 N.W.2d 48 (2012).

A sex offender registrant's actual registration under another jurisdiction's law is conclusive evidence that the registrant was "required" to register within the meaning of subsection (1)(a)(iv) of this section. Skaggs v. Nebraska State Patrol, 282 Neb. 154, 804 N.W.2d 611 (2011).

Subsection (1)(a)(iv) of this section has no residency requirement. Skaggs v. Nebraska State Patrol, 282 Neb. 154, 804 N.W.2d 611 (2011).

The Sex Offender Registration Act applies to an individual whose crime occurred prior to January 1, 1997, if the individual was incarcerated or on probation or parole for that crime on and after January 1, 1997. In re Interest of D.H., 281 Neb. 554, 797 N.W.2d 263 (2011).

Incest of an adult is not a registrable offense under the Sex Offender Registration Act. State v. Aguilar-Moreno, 17 Neb. App. 623, 769 N.W.2d 784 (2009).

29-4005.

A defendant who had a prior conviction for a registrable offense under the Sex Offender Registration Act could challenge on direct appeal a lifetime registration requirement, because the sentencing court must make a finding of fact concerning lifetime registration as part of the sentencing order. State v. Aguilar-Moreno, 17 Neb. App. 623, 769 N.W.2d 784 (2009).

29-4014.

This section does not violate the constitutional provisions relating to equal protection, special legislation, separation of powers, bills of attainder, ex post facto, or double jeopardy. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

29-4123.

Unless an abuse of discretion is shown, the trial court's determination on a motion for new trial, based on the issue of whether DNA evidence was of such a nature that if it had been offered and admitted at the former trial, it probably would have produced a substantially different result, will not be disturbed on appellate review. State v. Boppre, 280 Neb. 774, 790 N.W.2d 417 (2010).

30-1601.

The supersedeas bond requirement contained in this section applies to will contests removed from county court and tried in the first instance in district court pursuant to section 30-2429.01. In re Estate of Sehi, 17 Neb. App. 697, 772 N.W.2d 103 (2009).

30-2401.

In Nebraska, title to both real and personal property passes immediately upon death to the decedent's devisees or heirs, subject to administration, allowances, and a surviving spouse's elective share. Wilson v. Fieldgrove, 280 Neb. 548, 787 N.W.2d 707 (2010).

30-2404.

The mere filing of a claim with a probate court does not constitute commencement of a proceeding to enforce a claim. Lenners v. St. Paul Fire & Marine Ins. Co., 18 Neb. App. 772, 793 N.W.2d 357 (2010).

30-2429.01.

An appeal from a will contest removed to a district court pursuant to this section must comply with the supersedeas bond requirement contained in section 30-1601. In re Estate of Sehi, 17 Neb. App. 697, 772 N.W.2d 103 (2009).

30-2457.

A probate court's denial of an application for the appointment of a special administrator, brought pursuant to subsection (2) of this section, is a final, appealable order within the meaning of section 25-1902. In re Estate of Muncillo, 280 Neb. 669, 789 N.W.2d 37 (2010).

A special administrator is necessary to preserve an estate or secure its proper administration only when the personal representative is not lawfully fulfilling his or her duties under the Nebraska Probate Code, and at a minimum, requires an allegation that the personal representative is perpetrating fraud, has colluded with another to deprive the estate of a potential asset, is conflicted to properly administer the estate, or cannot act to preserve the estate, or the existence of some other equitable circumstance, plus some evidence of the personal representative's alleged dereliction of duty. In re Estate of Muncillo, 280 Neb. 669, 789 N.W.2d 37 (2010).

30-2464.

Section 24-517(1) confers upon the county court exclusive original jurisdiction of all matters relating to the decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of this section and section 30-2486. Lenners v. St. Paul Fire & Marine Ins. Co., 18 Neb. App. 772, 793 N.W.2d 357 (2010).

30-2486.

For purposes of any statute of limitations, the proper presentation of a claim is equivalent to commencement of a proceeding on the claim. Lenners v. St. Paul Fire & Marine Ins. Co., 18 Neb. App. 772, 793 N.W.2d 357 (2010).

Section 24-517(1) confers upon the county court exclusive original jurisdiction of all matters relating to the decedents' estates, including the probate of wills and the construction thereof, except as provided in section 30-2464(c) and this section. Lenners v. St. Paul Fire & Marine Ins. Co., 18 Neb. App. 772, 793 N.W.2d 357 (2010).

30-2488.

The 60-day period set forth in subsection (a) of this section is a jurisdictional requirement. If, after being given notice of this time period, the claimant fails to act, the claim is barred. In re Estate of Hockemeier, 280 Neb. 420, 786 N.W.2d 680 (2010).

Subsection (a) of this section imposes a time limitation on a decision changing disallowance of a claim to allowance but does not impose a time limit on changing an allowance to a disallowance. Lenners v. St. Paul Fire & Marine Ins. Co., 18 Neb. App. 772, 793 N.W.2d 357 (2010).

Subsection (a) of this section treats a failure to disallow a claim as an allowance of the claim, but also authorizes a personal representative to change his or her decision regarding allowance or disallowance of a claim. Lenners v. St. Paul Fire & Marine Ins. Co., 18 Neb. App. 772, 793 N.W.2d 357 (2010).

30-2608.

Appeals of matters arising under the Nebraska Probate Code are reviewed for error on the record. In re Guardianship of Elizabeth H., 17 Neb. App. 752, 771 N.W.2d 185 (2009).

The "fitness" standard applied in a guardianship appointment pursuant to this section is analogous to a juvenile court's finding that it would be contrary to a juvenile's welfare to return home. In re Guardianship of Elizabeth H., 17 Neb. App. 752, 771 N.W.2d 185 (2009).

The parental preference principle applies to proceedings to initially determine whether to appoint a guardian over a parent's objection. In re Guardianship of Elizabeth H., 17 Neb. App. 752, 771 N.W.2d 185 (2009).

Under subsection (d) of this section, the determination of who shall be guardian and conservator is ultimately dependent upon the best interests of the children, although a testamentary nomination of a guardian or conservator may have statutory priority. In re Guardianship & Conservatorship of McDowell, 17 Neb. App. 340, 762 N.W.2d 615 (2009).

30-3806.

The right of retainer of a distribution is a valid, equitable remedy available to trustees of trusts. In re Trust of Hrnicek, 280 Neb. 898, 792 N.W.2d 143 (2010).

30-3828.

The provision in subsection (b) of this section that a "beneficiary is definite if the beneficiary can be ascertained now or in the future" did not change the common-law rule that the beneficiary must be ascertainable from the trust instrument. Newman v. Liebig, 282 Neb. 609, 810 N.W.2d 408 (2011).

30-3850.

A creditor does not fail to comply with the notice provisions contained in subsection (a)(3) of this section merely because the amount requested by the creditor does not match the amount ultimately recovered after trial. Hastings State Bank v. Misle, 282 Neb. 1, 804 N.W.2d 805 (2011).

30-3862.

The court has the authority to remove a trustee if the trustee has engaged in self-dealing. Sherman v. Sherman, 16 Neb. App. 766, 751 N.W.2d 168 (2008).

The trial court did not refer to language of this section in finding that the cotrustee should be removed but made several factual findings supporting removal under this section, and the appellate court concluded that the cotrustee's actions when considered together justified removal of the cotrustee under this section. In re Charles C. Wells Revocable Trust, 15 Neb. App. 624, 734 N.W.2d 323 (2007).

30-3894.

The court viewed this section as recognition of the general rule that a cause of action for breach of trust, including a request for accounting, does not accrue until termination of the trust, with an exception if a potential claim for breach of trust is disclosed to the beneficiary. In re Charles C. Wells Revocable Trust, 15 Neb. App. 624, 734 N.W.2d 323 (2007).

30-38,110.

Because no prejudice to the parties appeared, court applied Nebraska Uniform Trust Code to judicial proceeding commenced prior to operative date of code. In re Charles C. Wells Revocable Trust, 15 Neb. App. 624, 734 N.W.2d 323 (2007).

39-1722.

The discretion exercised by a county board of commissioners under this section and section 39-1725 is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under section 25-1901. Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs., 17 Neb. App. 76, 758 N.W.2d 653 (2008).

39-1725.

The discretion exercised by a county board of commissioners under section 39-1722 and this section is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under section 25-1901. Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs., 17 Neb. App. 76, 758 N.W.2d 653 (2008).

42-357.

Section 42-1004(1)(d) is more specific than this section on the issue of modification or elimination of temporary spousal support. Edwards v. Edwards, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

42-358.

Because subsection (1) of this section designates guardian ad litem fees as "costs," they must be determined by the time of the entry of a final, appealable order. McCaul v. McCaul, 17 Neb. App. 801, 771 N.W.2d 222 (2009).

42-362.

Where the evidence does not clearly and affirmatively establish that a spouse is suffering from a mental illness or that such mental illness affects the spouse's ability to work, it is not an abuse of discretion to deny support and maintenance for a mentally ill spouse. Ginn v. Ginn, 17 Neb. App. 451, 764 N.W.2d 889 (2009).

42-364.

Fundamental fairness requires that when a trial court determines at a general custody hearing that joint legal custody is, or may be, in a child's best interests, but neither party has requested this custody arrangement, the court must give the parties an opportunity to present evidence on the issue before imposing joint legal custody. Jessen v. Line, 16 Neb. App. 197, 742 N.W.2d 30 (2007).

In cases of termination of parental rights under this section, the standard of proof must be by clear and convincing evidence. Timothy T. v. Shireen T., 16 Neb. App. 142, 741 N.W.2d 452 (2007).

Child support is equitable relief, which can be awarded by the court under this section. Johnson v. Johnson, 15 Neb. App. 292, 726 N.W.2d 194 (2006).

42-365.

The purpose of property division is to equitably distribute the marital assets between the parties, and the polestar for such distribution is fairness and reasonableness as determined by the facts of each case. Shuck v. Shuck, 18 Neb. App. 867, 806 N.W.2d 580 (2011).

The equitable division of property pursuant to this section is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and marital liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. Ging v. Ging, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

The purpose of a property division is to distribute the marital assets equitably between the parties. Ging v. Ging, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

Alimony orders may be modified or revoked for good cause shown. Good cause means a material and substantial change in circumstances and depends on the circumstances of each case. Metcalf v. Metcalf, 17 Neb. App. 138, 757 N.W.2d 124 (2008).

42-366.

In a dissolution of marriage proceeding, if the parties fail to agree on a property settlement, pursuant to subsection (8) of this section, the court shall order an equitable division of the marital estate. Ging v. Ging, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

Pursuant to subsection (8) of this section, for purposes of property division, the marital estate includes any pension and retirement plans owned by either party. Ging v. Ging, 18 Neb. App. 145, 775 N.W.2d 479 (2009).

Pursuant to subsection (8) of this section, early retirement incentives that result from employment during the marriage are included in the marital estate. Simon v. Simon, 17 Neb. App. 834, 770 N.W.2d 683 (2009).

42-371.

An income withholding notice issued by the Nebraska Department of Health and Human Services pursuant to the Income Withholding for Child Support Act is not an "execution" within the meaning of subsection (5) of this section. Fox v. Whitbeck, 280 Neb. 75, 783 N.W.2d 774 (2010).

Child support judgments do not become dormant by lapse of time, and the fact that a child support judgment ceases to be a lien by operation of subsection (5) of this section does not extinguish the judgment itself or cause it to become dormant. Fox v. Whitbeck, 280 Neb. 75, 783 N.W.2d 774 (2010).

42-371.01.

The filing of a deficient application under this section will not trigger a duty on the part of the obligee to file a corresponding objection. Cain v. Cain, 16 Neb. App. 117, 741 N.W.2d 448 (2007).

This section permits the district court, under specified circumstances, to enter a summary order of termination of child support in the absence of an objection by the obligee. Cain v. Cain, 16 Neb. App. 117, 741 N.W.2d 448 (2007).

42-742.

Pursuant to section 42-743, a litigant is precluded from raising an equitable estoppel defense to challenge the enforcement or modification of a foreign support order once the foreign order has been confirmed pursuant to this section. Trogdon v. Trogdon, 18 Neb. App. 313, 780 N.W.2d 45 (2010).

42-743.

Pursuant to this section, a litigant is precluded from raising an equitable estoppel defense to challenge the enforcement or modification of a foreign support order once the foreign order has been confirmed pursuant to section 42-742. Trogdon v. Trogdon, 18 Neb. App. 313, 780 N.W.2d 45 (2010).

42-746.

Where the parties' marriage was dissolved in New Mexico when both parties resided there, and after both parties and the subject children moved to Nebraska, the law of New Mexico, as the state which issued the initial controlling child support order, governed the duration of the child support obligation in a Nebraska modification proceeding. Wills v. Wills, 16 Neb. App. 559, 745 N.W.2d 924 (2008).

42-747.01.

Under this section, the provisions of section 42-746(c) and (d) are applied to a modification proceeding and govern the duration of the obligation of support. Wills v. Wills, 16 Neb. App. 559, 745 N.W.2d 924 (2008).

42-903.

Text messages cannot be construed to be within the meaning of physical menace, because words alone are not a physical threat or act within the purview of subsection (1)(b) of this section. Cloeter v. Cloeter, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

The phrase "imminent bodily injury" within the context of subsection (1)(b) of this section means a certain, immediate, and real threat to one's safety which places one in immediate danger of bodily injury; that is, bodily injury is likely to occur at any moment. Cloeter v. Cloeter, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

The term "physical menace" as used in subsection (1)(b) of this section means a physical threat or act and requires more than mere words. Cloeter v. Cloeter, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

42-924.

A domestic abuse protection order did not violate the defendant's constitutional rights to free speech because the defendant's conduct in contacting the victim violated the protection order and the protection order itself did not burden more speech than necessary to serve a significant government interest. State v. Doyle, 18 Neb. App. 495, 787 N.W.2d 254 (2010).

A protection order pursuant to this section is analogous to an injunction. Cloeter v. Cloeter, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

The Protection from Domestic Abuse Act allows any victim of domestic abuse to file a petition and affidavit for a protection order. Cloeter v. Cloeter, 17 Neb. App. 741, 770 N.W.2d 660 (2009).

42-1004.

Subsection (1)(d) of this section applies to both permanent and temporary spousal support. Edwards v. Edwards, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

Subsection (1)(d) of this section is more specific than section 42-357 on the issue of modification or elimination of temporary spousal support. Edwards v. Edwards, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

42-1006.

Evidence of lack of capacity, duress, fraud, and undue influence, as demonstrated by a number of factors uniquely probative of coercion in the premarital context, would be relevant in establishing the involuntariness of a premarital agreement. Edwards v. Edwards, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

That a party was not provided a fair and reasonable disclosure of the property or financial obligations of the other party is not alone sufficient to make the agreement unenforceable. Edwards v. Edwards, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

The party opposing enforcement of a premarital agreement has the burden of proving that the agreement is not enforceable. Edwards v. Edwards, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

The provisions of this section do not in any way suggest that if any part of a premarital agreement is unconscionable, the entire agreement is unenforceable. Edwards v. Edwards, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

When considering whether a party executed a premarital agreement voluntarily, courts should consider whether the evidence demonstrates coercion or lack of knowledge, the presence or absence of independent counsel, inequality of bargaining power, disclosure of assets, and the parties' understanding of the rights being waived or the intent of the agreement. Edwards v. Edwards, 16 Neb. App. 297, 744 N.W.2d 243 (2008).

43-101.

Adoption proceedings are special proceedings. In re Adoption of David C., 280 Neb. 719, 790 N.W.2d 205 (2010).

43-104.22.

The effect of a finding of abandonment is that the putative biological father has no further standing to raise objections in the matter of the adoption. In re Adoption of David C., 280 Neb. 719, 790 N.W.2d 205 (2010).

43-106.01.

A court cannot accept a voluntary relinquishment of a child prior to an adjudication and an adoption of a permanency plan. In re Interest of Cornelius K., 280 Neb. 291, 785 N.W.2d 849 (2010).

A juvenile court may order the Department of Health and Human Services to accept a voluntary relinquishment of parental rights when a child has been adjudicated and adoption is the permanency objective. In re Interest of Gabriela H., 280 Neb. 284, 785 N.W.2d 843 (2010).

43-245.

A custodial parent's live-in boyfriend or girlfriend is not a "parent." In re Interest of Ethan M., 15 Neb. App. 148, 723 N.W.2d 363 (2006).

43-247.

Where a juvenile has been adjudicated pursuant to subsection (3)(a) of this section and a permanency objective of adoption has been established, a juvenile court has authority under the juvenile code to order the Nebraska Department of Health and Human Services to accept a tendered relinquishment of parental rights. In re Interest of Elizabeth S., 282 Neb. 1015, 809 N.W.2d 495 (2012).

Under this section, when a juvenile has been charged with a felony, the district court and the juvenile court have concurrent jurisdiction, but the jurisdiction of the juvenile court ends when the individual reaches the age of majority, while the district court's jurisdiction continues. State v. Parks, 282 Neb. 454, 803 N.W.2d 761 (2011).

Although the Legislature did not specify a standard of proof under subsection (3)(c) of this section, the section does reference the Mental Health Commitment Act. Mental health commitments have been made under a clear and convincing evidence standard in Nebraska for approximately the last 30 years, and the Nebraska Supreme Court finds no reason to apply a different standard of proof in a juvenile case. In re Interest of Christopher T., 281 Neb. 1008, 801 N.W.2d 243 (2011).

Absent any provision affirmatively stating otherwise, it is within the juvenile court's discretion to issue whatever combination of statutorily authorized dispositions as the court deems necessary to protect the juvenile's best interests. In re Interest of Katrina R., 281 Neb. 907, 799 N.W.2d 673 (2011).

It is within the juvenile court's statutory power to issue a dispositional order for juveniles adjudicated under subsection (3)(b) of this section, which includes both legal custody with the Department of Health and Human Services and supervision by a probation officer. In re Interest of Katrina R., 281 Neb. 907, 799 N.W.2d 673 (2011).

Under this section and section 43-408(2), a juvenile court has jurisdiction over an adjudicated juvenile whom the court has placed at a youth rehabilitation and treatment center. But despite that jurisdiction, section 43-408(2) prohibits a juvenile court from reviewing the progress of a juvenile whom the court has placed at a youth rehabilitation and treatment center. In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

When a court adjudicates a juvenile under both subsections (2) and (3) of this section and commits the juvenile to the Office of Juvenile Services with a placement at a youth rehabilitation and treatment center, it has determined that the subsection (2) adjudication will control the juvenile's disposition. The disposition determination controls which review hearing statute applies, and the requirement in section 43-278 for 6-month review hearings does not authorize the court to conduct review hearings. In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

Section 43-274(1) authorizes a county attorney with knowledge of a juvenile in his or her county falling within the purview of subsection (3)(a) of this section to file a petition in that county's juvenile court. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

Subsection (3)(a) of this section provides that the juvenile court in each county shall have jurisdiction over any juvenile who lacks proper parental care by reason of the fault or habits of the child's parent, guardian, or custodian. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

This section gives the juvenile courts exclusive original jurisdiction as to any juvenile defined in subsection (3) of this section. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

Subsection (3)(a) of this section requires that the State prove the allegations in the petition by a preponderance of the evidence in cases involving both non-Indian and Indian children. In re Interest of Emma J., 18 Neb. App. 389, 782 N.W.2d 330 (2010).

Pursuant to subsection (3)(a) of this section, a mother was not properly placed on notice that her mental health would be the basis for seeking to prove an allegation that her child lacked proper parental care and was at risk of harm through the mother's fault when the allegations in a termination of parental rights petition concerned only the condition of her house and the lack of appropriate food for her child and did not mention the mother's mental health. In re Interest of Christian L., 18 Neb. App. 276, 780 N.W.2d 39 (2010).

In the exercise of its jurisdiction over a custody modification proceeding, a county court sitting as a juvenile court cannot permanently modify child custody through the mere adoption of a case plan pursuant to section 43-285(2). In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

This section, combined with sections 24-517 and 25-2740, vests juvenile courts and county courts sitting as juvenile courts with jurisdiction over a custody modification proceeding if the court already has jurisdiction over

the juvenile under a separate provision of this section. In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

A juvenile case brought under subsection (3)(a) of this section fits the definition of a "child custody proceeding" under section 43-1227(4) of the Uniform Child Custody Jurisdiction and Enforcement Act. In re Interest of Maxwell T., 15 Neb. App. 47, 721 N.W.2d 676 (2006).

43-251.01.

Neither subsection (2) of this section nor section 43-278 prohibits a juvenile court from placing a juvenile at a youth rehabilitation and treatment center when the court has adjudicated a juvenile under section 43-247(2) and (3). In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

43-274.

Subsection (1) of this section authorizes a county attorney with knowledge of a juvenile in his or her county falling within the purview of section 43-247(3)(a) to file a petition in that county's juvenile court. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

43-278.

Neither this section nor section 43-251.01(2) prohibits a juvenile court from placing a juvenile at a youth rehabilitation and treatment center when the court has adjudicated a juvenile under section 43-247(2) and (3). In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

When a court adjudicates a juvenile under section 43-247(2) and (3) and commits the juvenile to the Office of Juvenile Services with a placement at a youth rehabilitation and treatment center, it has determined that the subsection (2) adjudication will control the juvenile's disposition. The disposition determination controls which review hearing statute applies, and this section's requirement for 6-month review hearings does not authorize the court to conduct review hearings. Instead, the prohibition in section 43-408(2) of review hearings for juveniles placed at a youth rehabilitation and treatment center controls. In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

The statutory provision requiring that an adjudication hearing be held within 90 days after a juvenile petition is filed is directory, not mandatory. In re Interest of Maxwell T., 15 Neb. App. 47, 721 N.W.2d 676 (2006).

43-282.

Because venue is immaterial in juvenile proceedings, a court should not grant a motion to dismiss based on an allegation of improper venue. Pursuant to the statutory language, a juvenile court should first hold an adjudication hearing, and after the adjudication hearing, it should determine whether it would be proper to transfer the proceedings to a court in the county where the juvenile resides. In re Interest of Breana M., 18 Neb. App. 910, 795 N.W.2d 660 (2011).

This section allows an adjudication proceeding to be filed in any county and allows for discretionary transfer, after adjudication, to the county where the juvenile is living or domiciled. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

This section makes venue immaterial in addition to setting up a procedure for discretionary transfer. In re Interest of Tegan V., 18 Neb. App. 857, 794 N.W.2d 190 (2011).

43-283.01.

A "parent of the juvenile" means a biological parent or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition; a custodial parent's live-in boyfriend or girlfriend is not a "parent of the juvenile" for purposes of this section. In re Interest of Ethan M., 15 Neb. App. 148, 723 N.W.2d 363 (2006).

The term "aggravated circumstances" embodies the concept that the nature of the abuse or neglect must have been so severe or repetitive that to attempt reunification would jeopardize and compromise the safety of the child and would place the child in a position of an unreasonable risk to be reabused. In re Interest of Ethan M., 15 Neb. App. 148, 723 N.W.2d 363 (2006).

43-285.

In the exercise of its jurisdiction over a custody modification proceeding, a county court sitting as a juvenile court cannot permanently modify child custody through the mere adoption of a case plan pursuant to subsection (2) of this section. In re Interest of Ethan M., 18 Neb. App. 63, 774 N.W.2d 766 (2009).

In order for a court to disapprove of a plan proposed by the Department of Health and Human Services under this section, a party must prove by a preponderance of the evidence that the department's plan is not in the child's best interests. In re Interest of A.W. et al., 16 Neb. App. 210, 742 N.W.2d 250 (2007).

43-292.

The Indian Child Welfare Act's requirement of "active efforts" is separate and distinct from the "reasonable efforts" provision of subsection (6) of this section and therefore requires the State to plead active efforts by the State to prevent the breakup of the family. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

Evidence supported the juvenile court's finding that the father did not abandon the child when (1) the father actively sought custody and paid child support within the crucial 6-month period and (2) the father's delay in seeking intervention was due to just cause. In re Interest of Deztiny C., 15 Neb. App. 179, 723 N.W.2d 652 (2007).

Evidence supported the juvenile court's finding that the father did not neglect the child when (1) 5 years prior to the termination hearing, the father was sentenced to a jail term of 3 months and (2) throughout the child's life, the father provided continuing care for the child, did not refuse parental care, and worked to improve parenting skills. In re Interest of Deztiny C., 15 Neb. App. 179, 723 N.W.2d 652 (2007).

43-292.01.

Appointment of a guardian ad litem for a parent who is allegedly incompetent because of mental illness or mental deficiency is mandatory, and the failure to appoint a guardian ad litem is plain error which requires reversal of an order terminating the parent's rights. In re Interest of Presten O., 18 Neb. App. 259, 778 N.W.2d 759 (2010).

43-2,106.01.

Unadjudicated siblings have no cognizable interest in the sibling relationship separate and distinct from a child adjudicated under section 43-247(3)(a). Thus, unadjudicated siblings lack standing to appeal from a final order or judgment of a juvenile court. In re Interest of Meridian H., 281 Neb. 465, 798 N.W.2d 96 (2011).

Application of subsection (2)(d) of this section turns on whether the juvenile has been placed in jeopardy by the juvenile court, not by whether the Double Jeopardy Clause bars further action. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

The plain language of subsection (2)(d) of this section carves out an exception for delinquency cases in which jeopardy has attached. In such cases, the county attorney is limited to taking exception pursuant to the procedures of sections 29-2317 to 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

Under subsection (2)(d) of this section, when a county attorney files an appeal "in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy," the appeal must be taken by exception proceedings to the district court pursuant to sections 29-2317 to 29-2319. In re Interest of Rebecca B., 280 Neb. 137, 783 N.W.2d 783 (2010).

43-408.

Under subsection (2) of this section and section 43-247, a juvenile court has jurisdiction over an adjudicated juvenile whom the court has placed at a youth rehabilitation and treatment center. But despite that jurisdiction, subsection (2) of this section prohibits a juvenile court from reviewing the progress of a juvenile whom the court has placed at a youth rehabilitation and treatment center. In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

When a court adjudicates a juvenile under section 43-247(2) and (3) and commits the juvenile to the Office of Juvenile Services with a placement at a youth rehabilitation and treatment center, it has determined that the subsection (2) adjudication will control the juvenile's disposition. The disposition determination controls which review hearing statute applies, and the requirement in section 43-278 for 6-month review hearings does not

authorize the court to conduct review hearings. Instead, the prohibition in subsection (2) of this section of review hearings for juveniles placed at a youth rehabilitation and treatment center controls. In re Interest of Trey H., 281 Neb. 760, 798 N.W.2d 607 (2011).

43-413.

Although the juvenile court did not err in placing the juvenile's custody with the Office of Juvenile Services for purposes only of an evaluation, the juvenile court exceeded its statutory authority in ordering that office to pay for all costs associated with its order which were not covered by insurance. Under the plain language of subsection (4)(b), the county is responsible for the cost of the first 10 days of detention after the court ordered the evaluation. Under subsection (4)(a), the county is also responsible for all detention costs incurred after an evaluation period prior to disposition, the cost of delivering the child to the facility or institution for an evaluation, and the cost of returning the child to the court for disposition. In re Interest of Michael S., 16 Neb. App. 240, 742 N.W.2d 791 (2007).

Pursuant to subsection (3) of this section, a juvenile may not be committed to the Office of Juvenile Services without a prior evaluation, nor may the court commit a juvenile to the temporary custody of the Office of Juvenile Services prior to disposition. In re Interest of Teneko P., 15 Neb. App. 463, 730 N.W.2d 128 (2007).

43-416.

Only the Office of Juvenile Services has the authority to revoke a juvenile's parole. In re Interest of Sylvester L., 17 Neb. App. 791, 770 N.W.2d 669 (2009).

43-423.

If a juvenile court revokes a juvenile's parole, rather than the Office of Juvenile Services, a juvenile is not granted all of the rights to which he or she was entitled. In re Interest of Sylvester L., 17 Neb. App. 791, 770 N.W.2d 669 (2009).

43-512.15.

An individual who has been incarcerated for the minimum period of time specified in this section may file a complaint seeking modification of his or her child support obligation upon the basis that his or her incarceration is an involuntary reduction of income, unless the circumstances contained in subsection (1)(b) of this section are met. Rouse v. Rouse, 18 Neb. App. 128, 775 N.W.2d 457 (2009).

The statutory minimum period of incarceration is not limited to that occurring after sentencing, because a person continuously jailed while awaiting trial faces the same reduction in income as a person continuously incarcerated after sentencing. Rouse v. Rouse, 18 Neb. App. 128, 775 N.W.2d 457 (2009).

A child support obligor's incarceration is considered an involuntary reduction in income for purposes of modification when the obligor has been incarcerated for the statutorily specified minimum period of time, unless the circumstances contained in subsection (1)(b) of this section are met. Hopkins v. Stauffer, 18 Neb. App. 116, 775 N.W.2d 462 (2009).

43-1227.

A juvenile case brought under section 43-247(3)(a) fits the definition of a "child custody proceeding" under subsection (4) of this section of the Uniform Child Custody Jurisdiction and Enforcement Act. In re Interest of Maxwell T., 15 Neb. App. 47, 721 N.W.2d 676 (2006).

43-1244.

Overruling a motion to decline jurisdiction under this section as an inconvenient forum does not affect a substantial right and is not a final, appealable order. Meadows v. Meadows, 18 Neb. App. 333, 789 N.W.2d 519 (2010).

43-1312.

An order changing the permanency plan from reunification to adoption but otherwise continuing all of the same terms from prior dispositional orders, from which no appeal was taken and which provided the parent with an opportunity for reunification by complying with the terms of the rehabilitation plan, does not affect a substantial right of the parent and is not a final order. In re Interest of Tayla R., 17 Neb. App. 595, 767 N.W.2d 127 (2009).

43-1409.

The provision in this section that the acknowledgment of paternity is a "legal finding" means that it legally establishes paternity in the person named in the acknowledgment as the father. Cesar C. v. Alicia L., 281 Neb. 979, 800 N.W.2d 249 (2011).

43-1412.

Attorney fees and costs are statutorily allowed in paternity and child support cases. Coleman v. Kahler, 17 Neb. App. 518, 766 N.W.2d 142 (2009).

43-1504.

Under subsection (2) of this section, a motion to transfer a case to a tribal court was properly denied for good cause where the proceeding was at an advanced stage and the fact that cases involving some of the children were to remain in juvenile court was essentially a forum non conveniens matter. In re Interest of Leslie S. et al., 17 Neb. App. 828, 770 N.W.2d 678 (2009).

Pursuant to subsection (2) of this section, if the tribe or either parent of an Indian child petitions for transfer of the proceeding to the tribal court, the state court cannot proceed with the placement of the Indian child living outside a reservation without first determining whether jurisdiction of the matter should be transferred to the tribe. In re Interest of Lawrence H., 16 Neb. App. 246, 743 N.W.2d 91 (2007).

43-1505.

A judicial determination in an adjudication order that the State satisfied the active efforts requirement contained in subsection (4) of this section affects the substantial right of parents to raise their children, and is therefore a final, appealable order. In re Interest of Jamyia M., 281 Neb. 964, 800 N.W.2d 259 (2011).

An Indian child's parent does not qualify as an expert witness under the Nebraska Indian Child Welfare Act based solely on the parent's membership in the Indian tribe and status as the child's parent. In re Interest of Ramon N., 18 Neb. App. 574, 789 N.W.2d 272 (2010).

Pursuant to subsection (4) of this section, although the State should make active efforts in a termination of parental rights proceeding under the Indian Child Welfare Act, if further efforts would be futile, the requirement of active efforts is satisfied. In re Interest of Louis S. et al., 17 Neb. App. 867, 774 N.W.2d 416 (2009).

Pursuant to subsection (4) of this section, in a termination of parental rights proceeding under the Indian Child Welfare Act, the notion of culturally relevant active efforts applies to the parents, to the children, and to the family. In re Interest of Louis S. et al., 17 Neb. App. 867, 774 N.W.2d 416 (2009).

Pursuant to subsection (4) of this section, the Indian Child Welfare Act's requirement of "active efforts" requires more than the "reasonable efforts" standard applicable in non-Indian Child Welfare Act cases and at least some efforts should be culturally relevant. In re Interest of Louis S. et al., 17 Neb. App. 867, 774 N.W.2d 416 (2009).

A father's motion to dismiss the State's temporary custody petition due to the lack of Indian Child Welfare Act allegations by the State could be made during the course of closing arguments. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

Evidence that serious emotional harm or physical damage to an Indian child is likely to occur if the child is not removed from the home must be established by qualified expert testimony provided by a professional person having substantial education and experience in the area of his or her specialty, pursuant to the Indian Child Welfare Act. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

Evidence was insufficient to establish that a caseworker was sufficiently qualified to testify as an expert witness under the requirements of the Indian Child Welfare Act in an action seeking to adjudicate Indian children, where the caseworker had neither substantial experience in the delivery of child and family services to Indians or extensive knowledge of social and cultural standards in childrearing practices within the tribe, nor was she a professional person with substantial education and experience in the area of her specialty. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

The State was required to allege facts with regard to Indian Child Welfare Act requirements that set forth guidelines for courts to follow in involuntary proceedings, although the court knew that an Indian child was involved in the State's petition and motion for temporary custody of children and made Indian Child Welfare Act findings. In re Interest of Shayla H. et al., 17 Neb. App. 436, 764 N.W.2d 119 (2009).

43-1507.

A juvenile court's having jurisdiction over the parties and the subject matter constitutes a court of competent jurisdiction within the meaning of this section. In re Interest of Ramon N., 18 Neb. App. 574, 789 N.W.2d 272 (2010).

The absence of language in the petition implicating the Nebraska Indian Child Welfare Act did not support invalidating the adjudication where there was no appeal from the adjudication order. In re Interest of Ramon N., 18 Neb. App. 574, 789 N.W.2d 272 (2010).

43-2929.

This section requires that a parenting plan be developed and approved by the court in any dissolution proceeding where the custody of a minor child is at issue. Where a decree fails to do so, the decree is not a final, appealable order. Bhuller v. Bhuller, 17 Neb. App. 607, 767 N.W.2d 813 (2009).

43-3804.

The State's failure to comply with the notice requirements of subsection (2) of this section does not result in a denial of due process when a father whose parental rights have been terminated had notice of the proceedings and did not show that he was prejudiced by the lack of notification to the foreign consulate. In re Interest of Antonio O. & Gisela O., 18 Neb. App. 449, 784 N.W.2d 457 (2010).

44-358.

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

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

This section was intended to limit an insurer's ability to avoid liability for breach of increased hazard conditions which are so broad that an insured's violation of them is not causally relevant to the loss. D & S Realty v. Markel Ins. Co., 280 Neb. 567, 789 N.W.2d 1 (2010).

44-4821.

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

44-6407.

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

44-7532.

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

45-103.

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

45-103.01.

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

45-103.04.

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

45-104.

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

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

46-713.

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

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

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

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

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

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

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

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

47-503.

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

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

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

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

48-101.

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

48-102.

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

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

48-115.

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

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

48-120.

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

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

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

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

48-121.

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

48-125.

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

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

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

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

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

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

48-126.

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

48-128.

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

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

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

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

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

48-133.

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

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

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

48-139.

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

48-141.

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

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

48-146.

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

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

48-161.

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

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

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

48-162.01.

Subsection (7) of this section cannot be used solely to punish or coerce an injured worker. There must be evidence to support a finding that the worker's disability would have been reduced had the worker cooperated

with medical treatment or vocational rehabilitation. Hofferber v. Hastings Utilities, 282 Neb. 215, 803 N.W.2d 1 (2011).

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

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

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

48-177.

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

48-185.

An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is no sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. Nerison v. National Fire Ins. Co. of Hartford, 17 Neb. App. 161, 757 N.W.2d 21 (2008).

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

Under this section, an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. McKay v. Hershey Food Corp., 16 Neb. App. 79, 740 N.W.2d 378 (2007).

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

Pursuant to this section, an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. Davis v. Crete Carrier Corp., 15 Neb. App. 241, 725 N.W.2d 562 (2006).

48-628.

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

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

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

48-810.01.

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

48-816.

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

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

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

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

48-818.

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

48-824.

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

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

48-1229.

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

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

52-157.

To act with bad faith, one must know his or her lien is invalid or overstated or act with reckless disregard as to such facts. Chicago Lumber Co. of Omaha v. Selvera, 282 Neb. 12, 809 N.W.2d 469 (2011).

57-229.

The transfer of ownership occurred years after the enactment of the dormant mineral statutes and prevented the abandonment of the severed mineral interests for at least 23 years into the future. The appellants had the full 23-year period specified in this section to publicly exercise their right of ownership so as to prevent abandonment of the mineral interests. Peterson v. Sanders, 282 Neb. 711, 806 N.W.2d 566 (2011).

Nebraska's dormant mineral statutes expressly require the record owner of a severed mineral interest to publicly exercise the right of ownership by performing one of the actions specified in this section during the statutory dormancy period. Ricks v. Vap, 280 Neb. 130, 784 N.W.2d 432 (2010).

The plain language of this section provides that a severed mineral interest is abandoned unless the record owner of the interest is the one who publicly exercises it. Ricks v. Vap, 280 Neb. 130, 784 N.W.2d 432 (2010).

60-399.

A license plate hanging downward is not "fastened in an upright position" as required by subsection (1) of this section. State v. Hyland, 17 Neb. App. 539, 769 N.W.2d 781 (2009).

Where the front license plate was placed in the front window of the defendant's vehicle, displayed so that a law enforcement officer was unable to ascertain the numbers or see the plate clearly, a traffic violation occurred, giving the officer probable cause to stop the defendant's vehicle. State v. Richardson, 17 Neb. App. 388, 763 N.W.2d 420 (2008).

60-3,100.

Where the front license plate was placed in the front window of the defendant's vehicle, displayed so that a law enforcement officer was unable to ascertain the numbers or see the plate clearly, a traffic violation occurred, giving the officer probable cause to stop the defendant's vehicle. State v. Richardson, 17 Neb. App. 388, 763 N.W.2d 420 (2008).

60-498.01.

This section requires the director to conduct the administrative license revocation hearing, but allows the director to appoint a hearing officer to preside at the hearing, and thus, the hearing officer serves as the director's agent. Hashman v. Neth, 18 Neb. App. 951, 797 N.W.2d 275 (2011).

For purposes of subsection (5)(a) of this section, the test results are "received" on the date they are delivered to the law enforcement agency by which the arrest was effectuated and the arresting peace officer has 10 days thereafter to forward the sworn report to the director of the Department of Motor Vehicles. Freeman v. Neth, 18 Neb. App. 592, 790 N.W.2d 218 (2010).

In an administrative license revocation proceeding, pursuant to subsection (3) of this section, the sworn report of the arresting officer must, at a minimum, contain the information specified in this subsection in order to confer jurisdiction. Freeman v. Neth, 18 Neb. App. 592, 790 N.W.2d 218 (2010).

The 10-day time period for submitting a sworn report under subsection (5)(a) of this section is mandatory, and if the sworn report is submitted after the 10-day period, the Department of Motor Vehicles lacks jurisdiction to revoke a person's driver's license. Freeman v. Neth, 18 Neb. App. 592, 790 N.W.2d 218 (2010).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in section 60-6,197(2)—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. Teeters v. Neth, 18 Neb. App. 585, 790 N.W.2d 213 (2010).

Where a sworn report identifies two arresting officers and, as submitted, conveys the information required by the applicable statute, the omission of the second arresting officer's signature of the report is a technical deficiency that does not deprive the Department of Motor Vehicles of jurisdiction. Law v. Nebraska Dept. of Motor Vehicles, 18 Neb. App. 237, 777 N.W.2d 586 (2010).

Despite the officer's failure to check the box next to "Submitted to a blood test," the information contained under this heading clearly shows that a blood test was performed and that the results of the blood test were in a concentration above the statutory amount, which conveys the information required by subsection (3) of this section. Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

Nebraska law grants the director of the Department of Motor Vehicles jurisdiction to administratively revoke the license of a person found to be driving while under the influence of alcohol. Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

Subsection (3) of this section requires a sworn report to state that the person was arrested as described in section 60-6,197(2), the reasons for such arrest, that the person was requested to submit to the required test, and that the person submitted to a test, the type of test to which he submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

The sworn report of the arresting officer must, at a minimum, contain the information specified in the applicable statute in order to confer jurisdiction. Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

The test used to determine whether an omission from a sworn report becomes a jurisdictional defect, as opposed to a technical one, is whether, notwithstanding the omission, the sworn report conveys the information required by the applicable statute. Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

If a sworn report falling under subsection (5)(a) of this section is submitted after the 10-day period, the Department of Motor Vehicles lacks jurisdiction to revoke a person's driver's license. Murray v. Neth, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

The 10-day time limit set forth in subsection (3) of this section is directory rather than mandatory. Murray v. Neth, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

The 10-day time limit set forth in subsection (2) of this section, which states that an arresting officer shall forward a sworn report to the director of the Department of Motor Vehicles, is directory rather than mandatory. Walz v. Neth, 17 Neb. App. 891, 773 N.W.2d 387 (2009).

Under subsection (5)(a) of this section, the 10-day time period for submitting a sworn report is mandatory, and if the sworn report is submitted after the 10-day period, the Department of Motor Vehicles lacks jurisdiction to revoke a person's driver's license. Stoetzel v. Neth, 16 Neb. App. 348, 744 N.W.2d 465 (2008).

The 10-day time limit set forth in subsection (3) of this section is directory rather than mandatory. Thomsen v. Nebraska Dept. of Motor Vehicles, 16 Neb. App. 44, 741 N.W.2d 682 (2007).

The last sentence of subsection (5)(a) of this section modifies only the preceding sentence and does not apply to the other subsections. Thomsen v. Nebraska Dept. of Motor Vehicles, 16 Neb. App. 44, 741 N.W.2d 682 (2007).

The 10-day time limit set forth in subsection (2) of this section is directory rather than mandatory. Forgey v. Nebraska Dept. of Motor Vehicles, 15 Neb. App. 191, 724 N.W.2d 828 (2006).

60-498.02.

This section, providing that drivers whose operator's licenses had been revoked for a period of 1 year were eligible for an employment driving permit, and section 60-4,129, providing that drivers whose operator's licenses had been revoked for a period of 90 days were eligible for an employment driving permit after a period of 30 days, are not in conflict or ambiguous. Bazar v. Department of Motor Vehicles, 17 Neb. App. 910, 774 N.W.2d 433 (2009).

60-498.04.

Pursuant to Nebraska's administrative revocation statutes, decisions of the director of the Department of Motor Vehicles are appealed pursuant to the Administrative Procedure Act. Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

60-4,129.

Section 60-498.02, providing that drivers whose operator's licenses had been revoked for a period of 1 year were eligible for an employment driving permit, and this section, providing that drivers whose operator's licenses had been revoked for a period of 90 days were eligible for an employment driving permit after a period of 30 days, are not in conflict or ambiguous. Bazar v. Department of Motor Vehicles, 17 Neb. App. 910, 774 N.W.2d 433 (2009).

60-649.

A residential driveway is not private property that is open to public access. Thus, criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-662.

Criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,108.

Criminal liability under section 60-6,196 does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,121.

The Nebraska Legislature intended political subdivisions to have discretion in the installation of traffic control devices, for purposes of a claim under the Political Subdivisions Tort Claims Act. Dresser v. Thayer Cty, 18 Neb. App. 99, 774 N.W.2d 640 (2009).

60-6,196.

Criminal liability under this section does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in section 60-6,197(2)—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in this section. Teeters v. Neth, 18 Neb. App. 585, 790 N.W.2d 213 (2010); Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

The elements of driving while under the influence which the State must prove beyond a reasonable doubt are (1) that the defendant was operating or in actual physical control of a motor vehicle and (2) that he did so while under the influence of alcoholic liquor. State v. Martin, 18 Neb. App. 338, 782 N.W.2d 37 (2010).

A prior conviction resulting in a sentence of probation, and not actual imprisonment, can be used for enhancement in subsequent proceedings without a showing that the defendant had or waived counsel in the prior proceeding. State v. Wilson, 17 Neb. App. 846, 771 N.W.2d 228 (2009).

The revocation of an operator's license pursuant to subsection (2)(c) of this section as it existed prior to July 16, 2004, includes a revocation made under a city or village ordinance enacted in conformance with subsection (2)(c) of this section. State v. Flores, 17 Neb. App. 532, 767 N.W.2d 512 (2009).

60-6,197.

The validity of a charge for refusing to submit to a chemical test under subsection (3) of this section depends upon the State's showing a valid arrest under subsection (2). If the arrest was invalid because the police officers lacked probable cause, a conviction for refusing to submit to a chemical test is invalid. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

When a person submits to a chemical test of breath, the required recitations in the sworn report are (1) that the person was arrested as described in subsection (2) of this section—reasonable grounds to believe such person was driving while under the influence of alcoholic liquor or drugs—and the reasons for such arrest, (2) that the person was requested to submit to the required test, and (3) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. Teeters v. Neth, 18 Neb. App. 585, 790 N.W.2d 213 (2010); Wilson v. Neth, 18 Neb. App. 41, 773 N.W.2d 183 (2009).

For purposes of an administrative license revocation, including a statement in the sworn report that the individual was arrested pursuant to this section does not provide a factual basis for the arrest, because such is a mere legal conclusion. Yenney v. Nebraska Dept. of Motor Vehicles, 15 Neb. App. 446, 729 N.W.2d 95 (2007).

60-6,197.02.

"Prior conviction" for purposes of enhancing a conviction for driving under the influence is defined in terms of other laws regarding driving under the influence, while a "prior conviction" for purposes of enhancing a conviction for refusing a chemical test is defined in terms of refusal laws. There is no crossover between driving under the influence and refusal convictions for purposes of sentence enhancement. State v. Huff, 282 Neb. 78, 802 N.W.2d 77 (2011).

It was not the Legislature's intent to prohibit the consideration of prior out-of-state driving under the influence convictions simply because differing elements of the offense or differing quantums of proof make it merely *possible* that the defendant's behavior would not have resulted in a violation of section 60-6,196, had it occurred in Nebraska. State v. Garcia, 281 Neb. 1, 792 N.W.2d 882 (2011).

The prosecution presents prima facie evidence of a prior driving under the influence conviction by presenting a certified copy of the conviction and evidence that it was counseled; the burden then shifts to the defendant to rebut the presumption that the documents reflect that an "offense for which the person was convicted would have been a violation of section 60-6,196." State v. Garcia, 281 Neb. 1, 792 N.W.2d 882 (2011).

Under the plain language of this section, when sentencing for a driving under the influence conviction, a previous refusal to submit to chemical testing conviction is not in the list of convictions that are prior convictions for the purpose of enhancement, and when sentencing for a refusal conviction, a previous driving under the influence conviction is not in the list of prior convictions which can be used to enhance the refusal conviction. State v. Hansen, 16 Neb. App. 671, 749 N.W.2d 499 (2008).

60-6,197.03.

Pursuant to section 29-2262(2)(b), the mandate of subsection (6) of this section that an order of probation "shall also include" 60 days' confinement does not conflict with the provision that a trial court may require the offender to be confined for a period not to exceed 180 days; the minimum jail term for a period granted probation for an offense punishable under subsection (6) of this section is 60 days, and the maximum is 180 days. State v. Dinslage, 280 Neb. 659, 789 N.W.2d 29 (2010).

A license revocation ordered pursuant to this section begins at the time appointed in the court's order. State v. Lankford, 17 Neb. App. 123, 756 N.W.2d 739 (2008).

60-6,197.06.

The revocation of an operator's license pursuant to section 60-6,196(2)(c) as it existed prior to July 16, 2004, includes a revocation made under a city or village ordinance enacted in conformance with section 60-6,196(2)(c). State v. Flores, 17 Neb. App. 532, 767 N.W.2d 512 (2009).

60-6,197.09.

The imposition of the sentence, absent the pendency of an appeal, concludes the "proceedings" referred to in this section. State v. Lamb, 280 Neb. 738, 789 N.W.2d 918 (2010).

A motion to quash is a procedural prerequisite to facially challenge the constitutionality of this section. State v. Albrecht, 18 Neb. App. 402, 790 N.W.2d 1 (2010).

For the purposes of determining whether a defendant was participating in criminal proceedings, once a defendant has pleaded guilty and such plea was accepted to one charge, the defendant was obviously participating in that criminal proceeding at the time he pleaded to the second charge when both pleas were accepted at the same time. State v. Albrecht, 18 Neb. App. 402, 790 N.W.2d 1 (2010).

60-6,211.05.

A trial court's refusal to grant the use of an ignition interlock device under this section was proper where the use of the device was not found to be a condition necessary or likely to ensure that the defendant would lead a law-abiding life. State v. Kuhl, 16 Neb. App. 127, 741 N.W.2d 701 (2007).

60-6,211.08.

Conviction for possessing an open container of alcohol in a vehicle was invalid when police officers found defendant intoxicated in a vehicle that was parked on a residential driveway and overhanging a public sidewalk. State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).

60-6,219.

Where a vehicle is equipped with two taillights, subsection (6) of this section requires both taillights to give substantially normal light output and to show red directly to the rear. State v. Burns, 16 Neb. App. 630, 747 N.W.2d 635 (2008).

60-6,221.

Auxiliary driving lights are defined by section 60-6,225(2), and under that subsection, if they do not meet the criteria for headlights set forth in this section, it is a Class III misdemeanor under section 60-6,222. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The standard for a lawful headlight, and, by extension, a lawful auxiliary driving light, is found in this section. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The terms of section 60-6,225(2) require reference to this section, which provides that headlights shall produce a driving light sufficient to render clearly discernible a person 200 feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

Where a headlight or auxiliary driving light is so glaring or dazzling that an officer reasonably believes the light violates this section, such subjective belief could provide probable cause for a traffic stop. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

Whether a vehicle's front lights are unlawfully glaring or dazzling requires, at least for a conviction of the associated crime, an objective measurement under subsection (2) of this section. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,222.

Auxiliary driving lights are defined by section 60-6,225(2), and under that subsection, if they do not meet the criteria for headlights set forth in section 60-6,221, it is a Class III misdemeanor under this section. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,224.

The specific duty of a driver to dim a vehicle's lights in response to a signal from an oncoming driver is set forth in this section. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,225.

Auxiliary driving lights are defined by subsection (2) of this section, and under that subsection, if they do not meet the criteria for headlights set forth in section 60-6,221, it is a Class III misdemeanor under section 60-6,222. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

If fog lamps are contemplated under subsection (4) of this section as any device, other than headlights, spotlights, or auxiliary driving lights, which projects a beam of light of an intensity greater than 25 candlepower, then such fog lamps must be so directed that no part of the beam will strike the level of the surface on which the vehicle stands at a distance of more than 50 feet from the vehicle. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

The terms of subsection (2) of this section require reference to section 60-6,221, which provides that headlights shall produce a driving light sufficient to render clearly discernible a person 200 feet ahead, but the headlights shall not project a glaring or dazzling light to persons in front of such headlights. State v. Carnicle, 18 Neb. App. 761, 792 N.W.2d 893 (2010).

60-6,294.

The term "original limitations" as used in section 60-6,298 means the original statutory restrictions listed in this section. State v. Halverstadt, 282 Neb. 736, 809 N.W.2d 480 (2011).

60-6,298.

The phrase "exceeding the size or weight specified by the permit" used in subsection (4)(a) of this section clearly refers to either exceeding axle weights or exceeding gross weights. State v. Halverstadt, 282 Neb. 736, 809 N.W.2d 480 (2011).

The term "original limitations" as used in this section means the original statutory restrictions listed in section 60-6,294. State v. Halverstadt, 282 Neb. 736, 809 N.W.2d 480 (2011).

68-919.

Subsection (4) of this section clearly dispenses with foundation for the admission of the record, if properly certified. In re Estate of Reimers, 16 Neb. App. 610, 746 N.W.2d 724 (2008).

This section does not create any presumption that the amounts shown on the payment record of the Department of Health and Human Services are reimbursable by the recipient's estate—such must still be proved—and if the exhibit does not do so, then additional evidence is needed. In re Estate of Reimers, 16 Neb. App. 610, 746 N.W.2d 724 (2008).

68-1713.

Subsection (1)(d) of this section must be read in conjunction with the limitations and standards expressly provided by the Legislature. Davio v. Nebraska Dept. of Health & Human Servs., 280 Neb. 263, 786 N.W.2d 655 (2010).

68-1723.

This section does not authorize the removal of Medicaid benefits as a sanction for noncompliance with an Employment First contract. Davio v. Nebraska Dept. of Health & Human Servs., 280 Neb. 263, 786 N.W.2d 655 (2010).

71-915.

A mental health board may assign an alternate member to serve so that the board has the required three members. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

A person who is not a lawyer, a physician, a psychologist, a psychiatric social worker, a psychiatric nurse, or a clinical social worker is a "layman" within the meaning of this section. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

71-1115.

The Developmental Disabilities Court-Ordered Custody Act does not require proof of future harm before the court determines that the subject is in need of court-ordered custody and treatment and, therefore, does not violate due process. In re Interest of C.R., 281 Neb. 75, 793 N.W.2d 330 (2011).

71-1117.

The Developmental Disabilities Court-Ordered Custody Act provides procedures and evidentiary standards which protect an individual's constitutionally protected liberty interest and, therefore, does not violate the subject's due process rights. In re Interest of C.R., 281 Neb. 75, 793 N.W.2d 330 (2011).

71-1124.

The Developmental Disabilities Court-Ordered Custody Act provides procedures and evidentiary standards which protect an individual's constitutionally protected liberty interest and, therefore, does not violate the subject's due process rights. In re Interest of C.R., 281 Neb. 75, 793 N.W.2d 330 (2011).

71-1202.

This section does not violate the constitutional provisions relating to equal protection, special legislation, separation of powers, bills of attainder, ex post facto, or double jeopardy. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

71-1207.

The Sex Offender Commitment Act requires service of a summons upon the subject which fixes a time for the hearing before a mental health board within 7 calendar days after the subject has been taken into emergency protective custody. Condoluci v. State, 18 Neb. App. 112, 775 N.W.2d 196 (2009).

71-1219.

A hearing under subsection (1) of this section is a special proceeding within the ordinary meaning of the term. In re Interest of D.I., 281 Neb. 917, 799 N.W.2d 664 (2011).

Denial of a motion for reconsideration under subsection (1) of this section is a final, appealable order. In re Interest of D.I., 281 Neb. 917, 799 N.W.2d 664 (2011).

Once the subject of a petition has exercised his or her right to a review hearing, and asserted that there are less restrictive treatment alternatives available, the State is required to present clear and convincing evidence that a less restrictive treatment alternative is inappropriate. At that point, the subject may further rebut the State's evidence. In re Interest of D.I., 281 Neb. 917, 799 N.W.2d 664 (2011).

The State bears the burden to show by clear and convincing evidence that the subject remains mentally ill and dangerous. Under the plain language of this section, a mental health board must determine whether the subject's mental illness or personality disorder has been "successfully treated or managed," which necessarily requires the board to review and rely upon the original reason for commitment. In re Interest of D.I., 281 Neb. 917, 799 N.W.2d 664 (2011).

71-15,139.

Under this section, a public housing agency has the authority to file suit for recovery of the premises if the resident engages in violent criminal activity. Banks v. Housing Auth. of City of Omaha, 281 Neb. 67, 795 N.W.2d 632 (2011).

76-296.

An action for slander of title is based upon a false and malicious statement, oral or written, which disparages a person's title to real or personal property and results in special damage. For slander of title claims, malice requires (1) knowledge that the statement is false or (2) reckless disregard for its truth or falsity. Wilson v. Fieldgrove, 280 Neb. 548, 787 N.W.2d 707 (2010).

76-705.

Under section 76-726(2), the court encompassed in the expression "the court having jurisdiction of a proceeding instituted by a condemnee under" this section includes the district court to which an appeal is taken under section 76-715. The provision in section 76-726(2) allowing an award of attorney fees when "(a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected" authorizes the district court as well as the county court to award attorney fees upon the happening of either (a) or (b). Armstrong v. County of Dixon, 282 Neb. 623, 808 N.W.2d 37 (2011).

76-710.04.

This section does not prevent a city from acquiring private property for use as a deceleration lane on an existing public road for traffic control and safety purposes, even if the deceleration lane is contiguous to access to a retailer. City of Omaha v. Tract No. 1, 18 Neb. App. 247, 778 N.W.2d 122 (2010).

This section prohibits the use of eminent domain only where its primary purpose is economic development, and not where economic development may be a collateral benefit. City of Omaha v. Tract No. 1, 18 Neb. App. 247, 778 N.W.2d 122 (2010).

76-711.

Where a condemnee appeals from an appraisers' award to the district court and obtains an award greater than was awarded by the appraisers, the condemnee is entitled to interest pursuant to this section even if it is not requested in the prayer of the petition. Walter C. Diers Partnership v. State, 17 Neb. App. 561, 767 N.W.2d 113 (2009).

76-715.

Under section 76-726(2), the court encompassed in the expression "the court having jurisdiction of a proceeding instituted by a condemnee under section 76-705" includes the district court to which an appeal is taken under this section. The provision in section 76-726(2) allowing an award of attorney fees when "(a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected" authorizes the district court as well as the county court to award attorney fees upon the happening of either (a) or (b). Armstrong v. County of Dixon, 282 Neb. 623, 808 N.W.2d 37 (2011).

76-715.01.

Timely filing of the affidavit of mailing notice is required. Wooden v. County of Douglas, 16 Neb. App. 336, 744 N.W.2d 262 (2008).

76-720.

While this section, providing for the award of attorney fees upon the happening of certain events, is couched in terms of "may," in the absence of unusual and compelling reasons, the court "shall" enter such an award. Armstrong v. County of Dixon, 282 Neb. 623, 808 N.W.2d 37 (2011).

76-726.

Under subsection (2) of this section, the court encompassed in the expression "the court having jurisdiction of a proceeding instituted by a condemnee under section 76-705" includes the district court to which an appeal is taken under section 76-715. The provision in subsection (2) of this section allowing an award of attorney fees when "(a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected" authorizes the district court as well as the county court to award attorney fees upon the happening of either (a) or (b). Armstrong v. County of Dixon, 282 Neb. 623, 808 N.W.2d 37 (2011).

76-1013.

A suit to collect on a contract that is from the foreclosed deed of trust is governed by the statute of limitations found in section 25-205, rather than the 3-month statute of limitations found in this section. Boxum v. Munce, 16 Neb. App. 731, 751 N.W.2d 657 (2008).

The 3-month statute of limitations in this section applies only when the suit for deficiency is on the obligation for which the foreclosed trust deed was given as security. Boxum v. Munce, 16 Neb. App. 731, 751 N.W.2d 657 (2008).

76-2324.

The right of an operator of an underground facility to recover under this section is not dependent upon whether it has taken steps to become a "member" of a one-call notification center. Village of Hallam v. L.G. Barcus & Sons, 281 Neb. 516, 798 N.W.2d 109 (2011).

77-103.01.

The Tax Equalization and Review Commission did not err in finding that the market areas as drawn by the county assessor complied with professionally accepted methodology. Vanderheiden v. Cedar Cty. Bd. of Equal., 16 Neb. App. 578, 746 N.W.2d 717 (2008).

77-105.

In classifying whether a trade fixture should be taxed as personal property, rather than a fixture that should be taxed as real property, where the parcel of land on which the fixture is located is used directly in commercial

activities, it is irrelevant whether a taxpayer personally engages in the commercial activities on the land. Vandenberg v. Butler County Bd. of Equal., 281 Neb. 437, 796 N.W.2d 580 (2011).

The three-part test for determining whether an item constitutes a fixture, requiring the court to look at (1) actual annexation to the realty, or something appurtenant thereto, (2) appropriation to use or purpose of that part of the realty with which it is connected, and (3) the intention of the party making the annexation to make the article a permanent accession to the freehold, does not apply to the determination of whether a trade fixture should be classified as a fixture and taxed as real property or a trade fixture and taxed as personal property. Vandenberg v. Butler County Bd. of Equal., 281 Neb. 437, 796 N.W.2d 580 (2011).

77-112.

Real property sold at auction is sold in the ordinary course of trade within the meaning of this section. In re Estate of Craven, 281 Neb. 122, 794 N.W.2d 406 (2011).

In tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. Reynolds v. Keith Cty. Bd. of Equal., 18 Neb. App. 616, 790 N.W.2d 455 (2010).

The purchase price of property, standing alone, is not conclusive of the actual value of the property for assessment purposes; it is only one factor to be considered in determining actual value. Reynolds v. Keith Cty. Bd. of Equal., 18 Neb. App. 616, 790 N.W.2d 455 (2010).

77-1374.

Real and personal property of the state and its governmental subdivisions that is leased to a private party for any purpose other than a public purpose shall be subject to property taxes as if the property were owned by the lessee. Reynolds v. Keith Cty. Bd. of Equal., 18 Neb. App. 616, 790 N.W.2d 455 (2010).

77-1501.

The county board constitutes the board of equalization, and thus, the two boards have the same membership. But because each board has its own well-defined public duties and functions, the two boards are separate and distinct bodies. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

This section and Neb. Const. art. VIII, sec. 1, read together, require a county board of equalization to value comparable properties similarly, even where separate protests are heard in the first instance by referees who recommend greatly disparate property valuations. Zabawa v. Douglas Cty. Bd. of Equal., 17 Neb. App. 221, 757 N.W.2d 522 (2008).

77-1502.

For protests of real property to a county board of equalization, a protest shall be filed for each parcel. Widtfeldt v. Tax Equal. & Rev. Comm., 15 Neb. App. 410, 728 N.W.2d 295 (2007).

77-1502.01.

The ultimate responsibility to equalize valuations rests upon the county board of equalization, and it cannot avoid this duty by using the power to appoint referees. Zabawa v. Douglas Cty. Bd. of Equal., 17 Neb. App. 221, 757 N.W.2d 522 (2008).

77-2004.

Clear market value is measured by the fair market value of the property as of the date of the death of the grantor, less the consideration paid for the property. In re Estate of Craven, 281 Neb. 122, 794 N.W.2d 406 (2011).

Even though a natural parent-child relationship may exist elsewhere, if the parties regard each other in all of the usual incidents and relationships of family life as parent and child, the benefits of this section should be allowed. In re Estate of Malloy, 15 Neb. App. 755, 736 N.W.2d 399 (2007).

The burden is on the taxpayer to show that he or she clearly falls within the statutory language. In re Estate of Malloy, 15 Neb. App. 755, 736 N.W.2d 399 (2007).

77-5013.

A separate filing fee must accompany each appeal to the Tax Equalization and Review Commission and must be timely received by the commission in order for it to have jurisdiction over an appeal. Widtfeldt v. Tax Equal. & Rev. Comm., 15 Neb. App. 410, 728 N.W.2d 295 (2007).

77-5019.

Subsection (2)(a) of this section provides for service of only the state or a political subdivision. Cargill Meat Solutions v. Colfax Cty. Bd. of Equal., 281 Neb. 93, 798 N.W.2d 823 (2011).

Where the Tax Equalization and Review Commission lacked jurisdiction over a tax valuation appeal because of the appellant's failure to pay a filing fee, the Nebraska Court of Appeals also lacked jurisdiction over the appellant's further appeal filed pursuant to this section. Widtfeldt v. Tax Equal. & Rev. Comm., 15 Neb. App. 410, 728 N.W.2d 295 (2007).

79-515.

A contract continuation clause does not create a contract of indefinite duration in violation of this section. Central City Ed. Assn. v. Merrick Cty. Sch. Dist., 280 Neb. 27, 783 N.W.2d 600 (2010).

79-827.

A contract of a certificated employee may be canceled at any time during the school year pursuant to the provisions of this section. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

A contractual provision purporting to alter the deadline for notice of nonrenewal does not affect a school board's ability to cancel a contract pursuant to this section. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

The notice of cancellation required by this section is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-831.

If an employee who is given notice of possible cancellation of his or her contract does not request a hearing within 7 calendar days, a school board has no duty to provide a hearing. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-832.

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to section 79-834, if the notice states that all the formal due process hearing protections contained in this section will be provided. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-834.

The notice of cancellation required by section 79-827 is fulfilled, even where the notice incorrectly states that any hearing will be an informal due process hearing pursuant to this section, if the notice states that all the formal due process hearing protections contained in section 79-832 will be provided. Schiefelbein v. School Dist. No. 0013, 17 Neb. App. 80, 758 N.W.2d 645 (2008).

79-902.

Disability as defined in subsection (37) of this section has two components: (1) The individual must have a physical or mental impairment of the nature described, and (2) by reason of the impairment, the individual must be unable to engage in a substantially gainful activity. Shepherd v. Chambers, 281 Neb. 57, 794 N.W.2d 678 (2011).

79-951.

If the Public Employees Retirement Board's medical examiner opines that the member is not disabled, the member may offer other medical evidence. Shepherd v. Chambers, 281 Neb. 57, 794 N.W.2d 678 (2011).

Subsection (1) of this section ordinarily requires expert medical evidence to establish a disability. Shepherd v. Chambers, 281 Neb. 57, 794 N.W.2d 678 (2011).

79-1094.

The school board of any district maintaining more than one school may close any school or schools within the district. Haskell v. Madison Cty. Sch. Dist. No. 0001, 17 Neb. App. 669, 771 N.W.2d 156 (2009).

81-885.24.

A real estate broker's actions clearly demonstrated unworthiness under this section. Clark v. Tyrrell, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

Double jeopardy was not applicable to a real estate broker's discipline under this section. Clark v. Tyrrell, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

81-8,219.

Under subsection (4) of this section, the State has not waived its sovereign immunity for claims of fraudulent concealment. Doe v. Board of Regents, 280 Neb. 492, 788 N.W.2d 264 (2010).

A defendant may affirmatively plead that the plaintiff has failed to state a cause of action under this section because an exception to the waiver of sovereign immunity applies. Bojanski v. Foley, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

Even though this section has been amended in 1993, 1999, 2004, 2005, and 2007, claims for invasion of privacy are still not among those claims for which sovereign immunity provides protection for State employees or officers. Bojanski v. Foley, 18 Neb. App. 929, 798 N.W.2d 134 (2011).

81-1372.

The comparability requirement of the Industrial Relations Act is superseded by the 2-year contract requirement of the State Employees Collective Bargaining Act. State v. State Code Agencies Teachers Assn., 280 Neb. 459, 788 N.W.2d 238 (2010).

81-1382.

The January 10 deadline provided in this section is not jurisdictional. State v. State Code Agencies Teachers Assn., 280 Neb. 459, 788 N.W.2d 238 (2010).

81-1383.

Parties are not permitted to offer additional evidence before the Commission of Industrial Relations. The commission's review of a special master's ruling is an appeal and does not provide for the admission of additional evidence. State v. State Code Agencies Teachers Assn., 280 Neb. 459, 788 N.W.2d 238 (2010).

81-2031.

The election to receive either a refund of contributions plus accrued interest or a monthly annuity is made by "the officer." Klimek v. Klimek, 18 Neb. App. 82, 775 N.W.2d 444 (2009).

81-2032.

A benefit is a cash payment or service provided for under an annuity, pension plan, or insurance policy. J.M. v. Hobbs, 281 Neb. 539, 797 N.W.2d 227 (2011).

An annuity is a fixed sum of money payable periodically. J.M. v. Hobbs, 281 Neb. 539, 797 N.W.2d 227 (2011).

This section exempts annuities or benefits a person is entitled to receive under the Nebraska State Patrol Retirement Act from execution, even in the person's possession. J.M. v. Hobbs, 281 Neb. 539, 797 N.W.2d 227 (2011).

83-174.01.

This section is not unconstitutionally vague. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

83-174.02.

This section provides a mechanism for identifying potentially dangerous sex offenders prior to their release from incarceration and for notifying prosecuting authorities so that they have adequate time to determine whether to file a petition under the Sex Offender Commitment Act before the offender's release date. It does not create any substantive or procedural rights in the offender who is the subject of the mental health evaluation. In re Interest of D.H., 281 Neb. 554, 797 N.W.2d 263 (2011).

83-174.03.

Because lifetime community supervision under this section is an additional form of punishment, a jury, rather than a trial court, must make a specific finding concerning the facts necessary to establish an aggravated offense where such facts are not specifically included in the elements of the offense of which the defendant is convicted. State v. Alfredson, 282 Neb. 476, 804 N.W.2d 153 (2011).

83-183.

This section, when construed with section 83-183.01, does not require that an inmate be provided with full-time employment as a prerequisite to the applicability of rules and regulations promulgated under the authority of section 83-183.01. Hurbenca v. Nebraska Dept. of Corr. Servs., 18 Neb. App. 31, 773 N.W.2d 402 (2009).

83-183.01.

Section 83-183, when construed with this section, does not require that an inmate be provided with full-time employment as a prerequisite to the applicability of rules and regulations promulgated under the authority of this section. Hurbenca v. Nebraska Dept. of Corr. Servs., 18 Neb. App. 31, 773 N.W.2d 402 (2009).

83-1,106.

A defendant ordered to complete a work ethic camp was "in custody." State v. Becker, 282 Neb. 449, 804 N.W.2d 27 (2011).

Under this section, when consecutive sentences are imposed for two or more offenses, periods of presentence incarceration may be credited only against the aggregate of all terms imposed: an offender who receives consecutive sentences is entitled to credit against only the first sentence imposed, while an offender sentenced to concurrent terms in effect receives credit against each sentence. State v. Williams, 282 Neb. 182, 802 N.W.2d 421 (2011).

The phrase "in custody" under this section means judicially imposed physical confinement in a governmental facility authorized for detention, control, or supervision of a defendant before, during, or after a trial on a criminal charge. State v. Anderson, 18 Neb. App. 329, 779 N.W.2d 623 (2010).

83-1,108.

"Good time" under this section should not be applied against a mandatory minimum sentenced imposed under section 29-2221(1). Hurbenca v. Nebraska Dept. of Corr. Servs., 16 Neb. App. 222, 742 N.W.2d 773 (2007).

83-4,145.

Defendants are to be given credit for time served at work camp programs. State v. Becker, 282 Neb. 449, 804 N.W.2d 27 (2011).

83-965.

This section is not an unconstitutional delegation of legislative power. State v. Ellis, 281 Neb. 571, 799 N.W.2d 267 (2011).

84-712.

The Nebraska Department of Correctional Services had no obligation to transport an inmate in its custody to an office where a particular record was located to examine the record. Russell v. Clarke, 15 Neb. App. 221, 724 N.W.2d 840 (2006).

84-901.

Under the Administrative Procedure Act, an appellate court may reverse, vacate, or modify a district court's judgment or final order for errors appearing on the record. Murray v. Neth, 17 Neb. App. 900, 773 N.W.2d 394 (2009).

Because the University of Nebraska College of Law Student-Faculty Honor Committee and the College of Law dean are not authorized by law to make rules and regulations, they are not "agencies," and thus, their decisions are not subject to judicial review under the Administrative Procedure Act. Kerr v. Board of Regents, 15 Neb. App. 907, 739 N.W.2d 224 (2007).

84-913.03.

Whether the hearing is conducted by videoconference is permissive and discretionary. Robbins v. Neth, 15 Neb. App. 67, 722 N.W.2d 76 (2006).

84-914.

Ex parte communications that the director of the Department of Motor Vehicles had with police officers who were potential witnesses at a motorist's administrative license revocation hearing did not violate the motorist's due process rights; neither officer was a party in the license revocation proceeding nor a person outside the Department of Motor Vehicles having an interest in the motorist's case. Walz v. Neth, 17 Neb. App. 891, 773 N.W.2d 387 (2009).

84-917.

An issue that has not been presented in a petition for judicial review has not been properly preserved for consideration by the district court. Skaggs v. Nebraska State Patrol, 282 Neb. 154, 804 N.W.2d 611 (2011).

Subsection (5)(b)(i) of this section permits the district court to review only matters which were not properly raised in the proceedings before an administrative agency. Skaggs v. Nebraska State Patrol, 282 Neb. 154, 804 N.W.2d 611 (2011).

A party is "aggrieved" within the meaning of subsection (1) of this section if it has standing to invoke a court's jurisdiction—that is, if it has a legal or equitable right, title, or interest in the subject matter of the controversy. Central Neb. Pub. Power Dist. v. North Platte NRD, 280 Neb. 533, 788 N.W.2d 252 (2010).

The Department of Banking and Finance is statutorily authorized to require payment for the costs of preparing the official record from the party seeking review of its decision prior to transmitting the record. JHK, Inc. v. Nebraska Dept. of Banking & Finance, 17 Neb. App. 186, 757 N.W.2d 515 (2008).

The district court lacked subject matter jurisdiction because the petitioner failed to timely include as a party defendant the Department of Correctional Services, a necessary party under the Administrative Procedure Act. Tlamka v. Parry, 16 Neb. App. 793, 751 N.W.2d 664 (2008).

In a true de novo review, the district court's decision is to be made independently of the agency's prior disposition and the district court is not required to give deference to the findings of fact and the decision of the agency hearing officer. DeBoer v. Nebraska Dept. of Motor Vehicles, 16 Neb. App. 760, 751 N.W.2d 651 (2008).

In an appeal under subsection (5)(a) of this section, the district court conducts a de novo review of the record of the agency. Clark v. Tyrrell, 16 Neb. App. 692, 750 N.W.2d 364 (2008).

Pursuant to subsection (2)(a) of this section, the phrase "county where the action is taken" is the site of the first adjudicated hearing of a disputed claim. Yelli v. Neth, 16 Neb. App. 639, 747 N.W.2d 459 (2008).

84-1408.

A county board of equalization is a public body whose meetings shall be open to the public. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1409.

As an administrative agency of the county, a county board of equalization is a public body. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

The electors of a township at their annual meeting are a public body under the Open Meetings Act. State ex rel. Newman v. Columbus Township Bd., 15 Neb. App. 656, 735 N.W.2d 399 (2007).

84-1411.

A county board of commissioners and a county board of equalization are not required to give separate notices when the notice states only the time and place that the boards meet and directs a citizen to where the agendas for each board can be found. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

A county board of equalization is a public body which is required to give advanced publicized notice of its meetings. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

Notice of recessed and reconvened meetings must be given in the same fashion as the original meeting. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

True notice of a meeting is not given by burying such in the minutes of a prior board proceeding. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1413.

There is no requirement that a public body make a record of where notice was published or posted. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1414.

The Legislature has granted standing to a broad scope of its citizens for the very limited purpose of challenging meetings allegedly in violation of the Open Meetings Act, so that they may help police the public policy embodied by the act. Schauer v. Grooms, 280 Neb. 426, 786 N.W.2d 909 (2010).

Voiding an entire meeting is a proper remedy for violations of the Open Meetings Act. Once a meeting has been declared void pursuant to Nebraska's public meetings law, board members are prohibited from considering any information obtained at the illegal meeting. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

87-127.

The construction given the federal Trademark Act of 1946 as amended (Lanham Trade-Mark Act) should be examined as persuasive authority for interpreting and construing the Trademark Registration Act. ADT Security Servs. v. A/C Security Systems, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

The Lanham Trade-Mark Act provides that a party can recover the infringer's profits, any damages sustained, and the costs of the action. ADT Security Servs. v. A/C Security Systems, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

87-128.

Pursuant to subsection (1) of this section, the statutory hallmarks of an abandoned service or trademark are (a) when its use has been discontinued with intent not to resume such use, which may be inferred from the circumstances, or its nonuse for 2 consecutive years shall constitute prima facie evidence of abandonment or (b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark. ADT Security Servs. v. A/C Security Systems, 15 Neb. App. 666, 736 N.W.2d 737 (2007).

87-303.

Nebraska's Uniform Deceptive Trade Practices Act does not permit an injunction to prevent the copying of a product. Gengenbach v. Hawkins Mfg., 18 Neb. App. 488, 785 N.W.2d 853 (2010).

Under Nebraska's Uniform Deceptive Trade Practices Act, injunctive relief granted for the copying of an article is limited to the prevention of confusion or misunderstanding as to the source. Gengenbach v. Hawkins Mfg., 18 Neb. App. 488, 785 N.W.2d 853 (2010).

By its own terms, subsection (a) of this section provides only for equitable relief consistent with general principles of equity. Reinbrecht v. Walgreen Co., 16 Neb. App. 108, 742 N.W.2d 243 (2007).

The Uniform Deceptive Trade Practices Act, specifically this section, does not provide a private right of action for damages. Reinbrecht v. Walgreen Co., 16 Neb. App. 108, 742 N.W.2d 243 (2007).

NEBRASKA UNIFORM COMMERCIAL CODE

UCC 1-103.

Common-law claims are displaced when the Uniform Commercial Code applies. Mandolfo v. Mandolfo, 281 Neb. 443, 796 N.W.2d 603 (2011).

UCC 2-102.

The Uniform Commercial Code did not apply to a contract for the sale of an ongoing grain business, including both goods and nongoods, because the principal purpose of the transaction was the sale of nongoods. MBH, Inc. v. John Otte Oil & Propane, 15 Neb. App. 341, 727 N.W.2d 238 (2007).

Whether the Uniform Commercial Code applies to a contract for the sale of both goods and nongoods is a question of law. MBH, Inc. v. John Otte Oil & Propane, 15 Neb. App. 341, 727 N.W.2d 238 (2007).

UCC 3-118.

Pursuant to subsection (g) of this section, in the absence of fraudulent concealment by the defendant, the discovery rule does not toll the statute of limitations for claims involving negotiable instruments under the Uniform Commercial Code. Mandolfo v. Mandolfo, 281 Neb. 443, 796 N.W.2d 603 (2011).

UCC 3-419.

A person receiving only an indirect benefit from a transaction can qualify as an accommodation party. Sack Lumber Co. v. Goosic, 15 Neb. App. 529, 732 N.W.2d 690 (2007).

Whether a person is an accommodation party is a question of fact. Sack Lumber Co. v. Goosic, 15 Neb. App. 529, 732 N.W.2d 690 (2007).

UCC 3-420.

Common-law claims in which the plaintiff alleges that a bank made or obtained payment on an instrument to a person not entitled to enforce the instrument or receive payment on it are displaced by the Uniform Commercial Code. Mandolfo v. Mandolfo, 281 Neb. 443, 796 N.W.2d 603 (2011).

UCC 3-604.

Pursuant to subsection (2) of section 27-804, an alleged verbal cancellation or discharge of a promissory note cannot be said to be against a decedent's pecuniary interest, because there was no evidence of discharge by one of the physical acts, as detailed in Uniform Commercial Code section 3-604(a)(i), nor was there a signed writing, as detailed in section 3-604(a)(ii), offered or received into evidence which purported to discharge the debt owed to the decedent. Haynes v. Dover, 17 Neb. App. 640, 768 N.W.2d 140 (2009).

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

ARTICLE IV

EXECUTIVE

Section
5. Impeachment.

Sec. 5 Impeachment.

A civil officer of this state shall be liable to impeachment for any misdemeanor in office or for any misdemeanor in pursuit of such office.

Source: Neb. Const. art. V, sec. 5 (1875); Transferred by Constitutional Convention, 1919-1920, art. IV, sec. 5; Amended 2012, Laws 2012, LR19CA, sec. 1.

ARTICLE XV

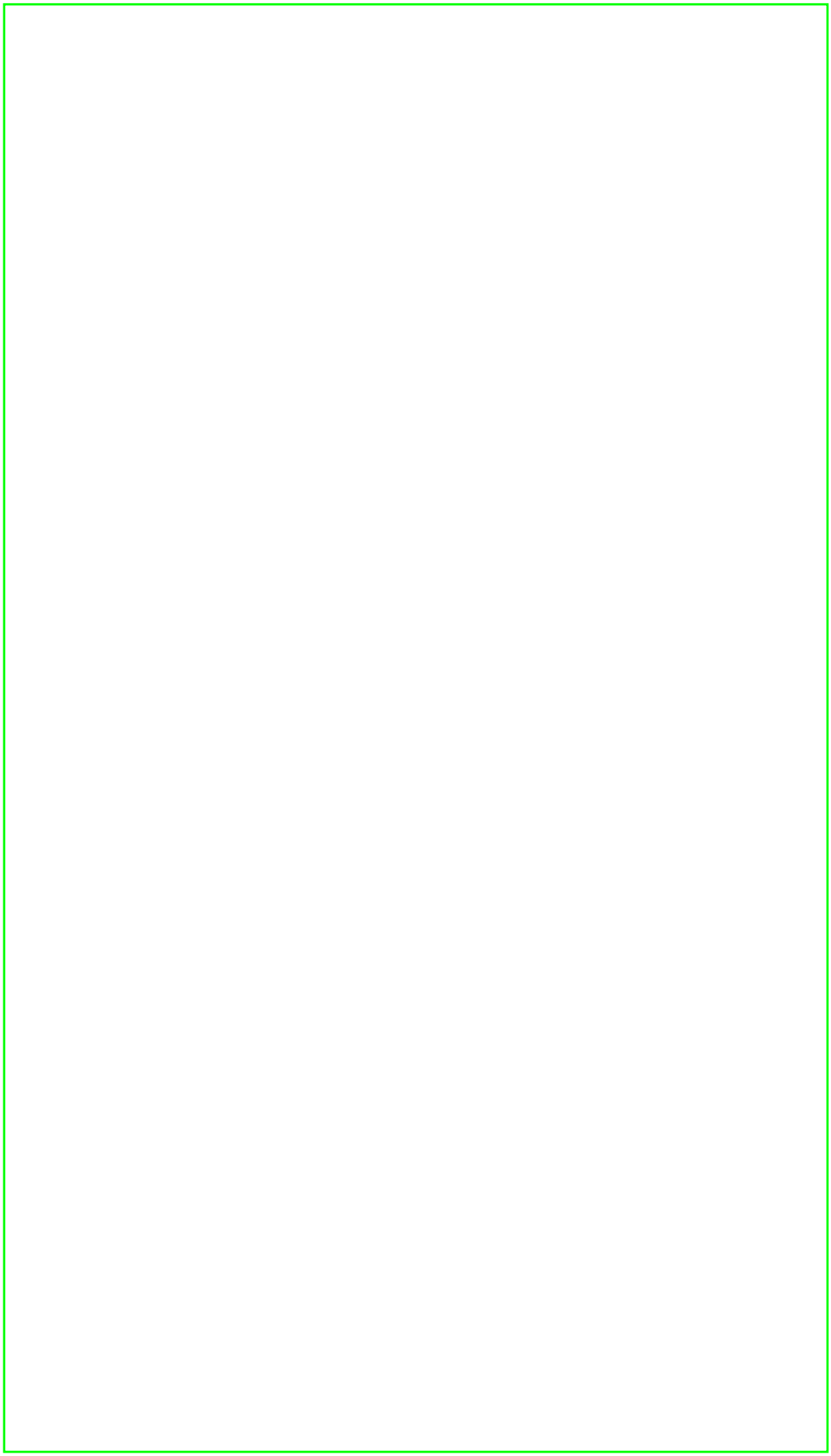
MISCELLANEOUS PROVISIONS

Section
25. Right to hunt, to fish, and to harvest wildlife; public hunting, fishing, and harvesting of wildlife; preferred means of managing and controlling wildlife.

Sec. 25 Right to hunt, to fish, and to harvest wildlife; public hunting, fishing, and harvesting of wildlife; preferred means of managing and controlling wildlife.

The citizens of Nebraska have the right to hunt, to fish, and to harvest wildlife, including by the use of traditional methods, subject only to laws, rules, and regulations regarding participation and that promote wildlife conservation and management and that preserve the future of hunting, fishing, and harvesting of wildlife. Public hunting, fishing, and harvesting of wildlife shall be a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provision of law relating to trespass or property rights. This section shall not be construed to modify any provision of law relating to Article XV, section 4, Article XV, section 5, Article XV, section 6, or Article XV, section 7, of this constitution.

Source: Neb. Const. art. XV, sec. 25 (2012); Adopted 2012, Laws 2012, LR40CA, sec. 1.



CHAPTER 1
ACCOUNTANTS

Section
1-136.02. Permit; when issued.

1-136.02 Permit; when issued.

(1) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a certificate as a certified public accountant when such holder has had:

(a) Two years of accounting experience satisfactory to the board, in any state, in employment as an accountant in a firm, proprietorship, partnership, corporation, limited liability company, or other business entity authorized in any state to engage in the practice of public accountancy under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state; or

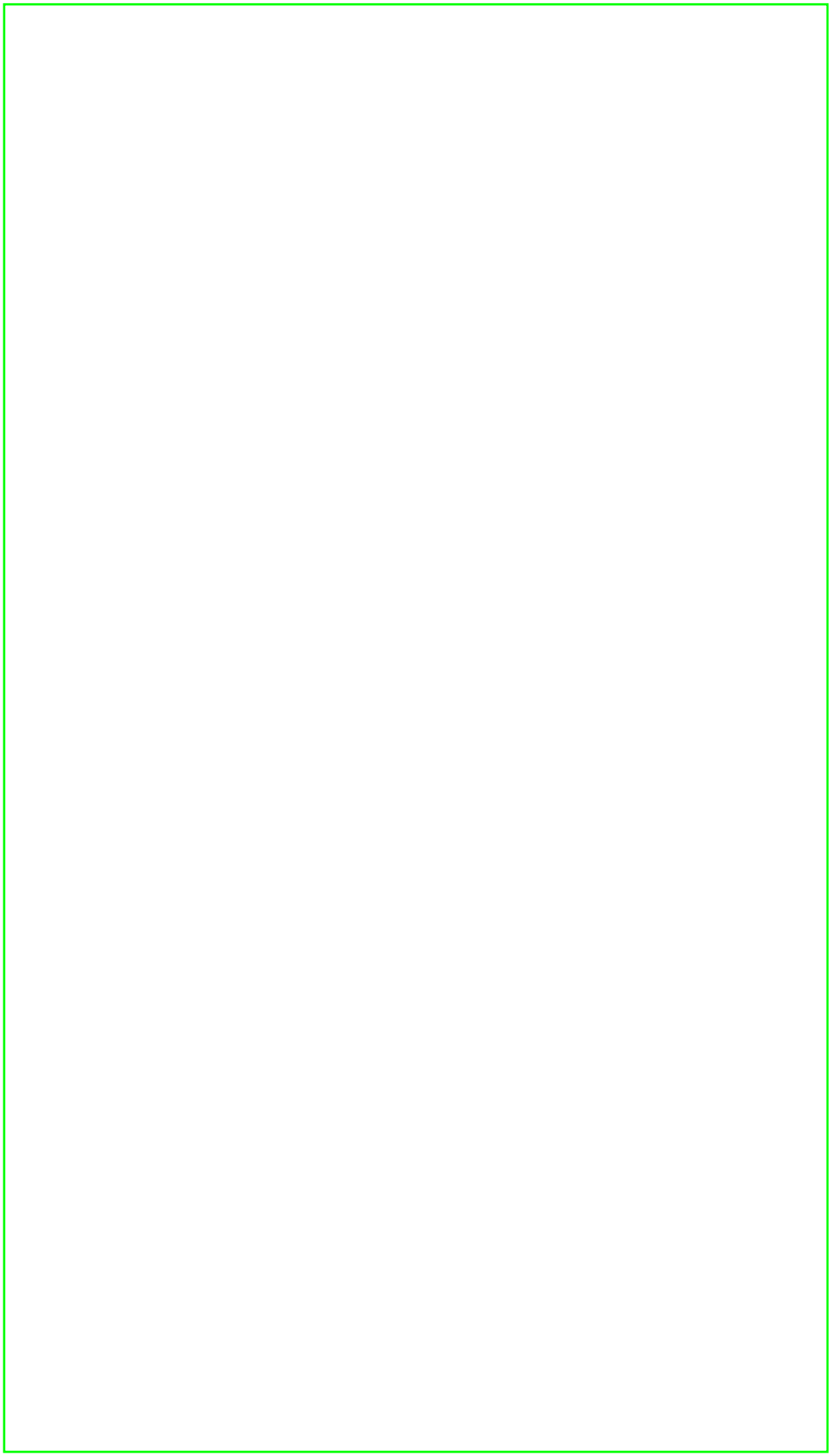
(b) Three years of accounting experience satisfactory to the board, in any state, in employment as (i) an accountant in government or business under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state or (ii) faculty at a college or university of recognized standing under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state.

(2) The board shall issue a permit under subdivision (1)(a) of section 1-136 to a holder of a reciprocal certificate issued under section 1-124 upon a showing that:

(a) He or she meets all current requirements in this state for issuance of a permit at the time the application is made; and

(b) At the time of the application for a permit the applicant, within the ten years immediately preceding application, meets the experience requirement in subdivision (1)(a) or (b) of this section.

Source: Laws 1977, LB 290, § 3; Laws 1993, LB 41, § 2; Laws 1997, LB 114, § 29; Laws 2007, LB24, § 2; Laws 2009, LB31, § 19; Laws 2013, LB27, § 1.
Effective date September 6, 2013.



CHAPTER 2
AGRICULTURE

ARTICLE 9
NOXIOUS WEED CONTROL

2-967 Riparian Vegetation Management Task Force; created; members.

The Riparian Vegetation Management Task Force is created. The Governor shall appoint the members of the task force. The members shall include one surface water project representative from each river basin that has been determined to be fully appropriated pursuant to section 46-714 or 46-720 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one representative from the Department of Agriculture, the Department of Environmental Quality, the Department of Natural Resources, the office of the Governor, the office of the State Forester, the Game and Parks Commission, and the University of Nebraska; two representatives nominated by the Nebraska Association of Resources Districts; two representatives nominated by the Nebraska Weed Control Association; one riparian landowner from each of the state's congressional districts; and one representative from the Nebraska Environmental Trust. In addition to such members, any member of the Legislature may serve as a member of the task force at his or her option. For administrative and budgetary purposes only, the task force shall be housed within the Department of Agriculture. This section terminates on June 30, 2015.

Source: Laws 2007, LB701, § 1; Laws 2009, LB98, § 3; Laws 2013, LB477, § 1.
Effective date September 6, 2013.
Termination date June 30, 2015.

2-968 Riparian Vegetation Management Task Force; duties; meetings; final report; expenses.

The Riparian Vegetation Management Task Force, in consultation with appropriate federal agencies, shall develop and prioritize vegetation management goals and objectives, analyze the cost-effectiveness of available vegetation treatment, and develop plans and policies to achieve such goals and objectives. Any plan shall utilize the principles of integrated vegetation management and sound science. The task force shall convene within thirty days after the appointment of the members is complete to elect a chairperson and conduct such other business as deemed necessary. The efforts of the task force shall be initially directed toward river basins designated by the Department of Natural Resources as fully appropriated or overappropriated. Task force meetings shall be held in communities within the Republican River and Platte River basins with a final report due to the Governor and the Legislature prior to June 30, 2015. The report submitted to the Legislature shall be submitted electronically. It is the intent of the Legislature that expenses of the task force not exceed twenty-five thousand dollars per fiscal year. This section terminates on June 30, 2015.

Source: Laws 2007, LB701, § 2; Laws 2009, LB98, § 4; Laws 2012, LB782, § 2; Laws 2013, LB477, § 2.
Effective date September 6, 2013.
Termination date June 30, 2015.

ARTICLE 10

PLANT DISEASES, INSECT PESTS, AND ANIMAL PESTS

(k) PLANT PROTECTION AND PLANT PEST ACT

Section

(k) PLANT PROTECTION AND PLANT PEST ACT

2-1072 Act, how cited.

Sections 2-1072 to 2-10,117 shall be known and may be cited as the Plant Protection and Plant Pest Act.

Source: Laws 1988, LB 874, § 1; Laws 1993, LB 406, § 1; Laws 2008, LB791, § 1; Laws 2013, LB68, § 1.
Effective date September 6, 2013.

2-1074 Definitions, where found.

For purposes of the Plant Protection and Plant Pest Act, unless the context otherwise requires, the definitions found in sections 2-1074.01 to 2-1089 shall be used.

Source: Laws 1988, LB 874, § 3; Laws 1993, LB 406, § 2; Laws 2008, LB791, § 2; Laws 2013, LB68, § 2.
Effective date September 6, 2013.

2-1075.01 Repealed. Laws 2013, LB 68, § 23.

2-1075.03 Certification inspection of Nebraska-grown nursery stock, defined.

Certification inspection of Nebraska-grown nursery stock shall mean an inspection performed pursuant to section 2-1095.

Source: Laws 2013, LB68, § 3.
Effective date September 6, 2013.

2-1077 Repealed. Laws 2013, LB 68, § 23.

2-1079.03 Grow, defined.

Grow shall mean to produce a plant or plant product, by propagation or cultivation, including, but not limited to, division, transplant, seed, or cutting, generally over a period of one year or greater. Grow does not include transferring nursery stock from one container to another or potting bare-root nursery stock, if the stock will be distributed within twelve months.

Source: Laws 2013, LB68, § 4.
Effective date September 6, 2013.

2-1080 Repealed. Laws 2013, LB 68, § 23.

2-1080.01 Harmonization plan, defined.

Harmonization plan shall mean any agreement between states, or a state or states and the federal government, designed to limit the spread of a plant pest into or out of a designated area.

Source: Laws 2013, LB68, § 5.
Effective date September 6, 2013.

2-1083 Nursery stock, defined.

Nursery stock shall mean all botanically classified hardy perennial or biennial plants, trees, shrubs, and vines, either domesticated or wild, cuttings, grafts, scions, buds, bulbs, rhizomes, or roots thereof, and such plants and plant parts for, or capable of, propagation, excluding plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, potatoes, or seeds of any such plant.

Source: Laws 1988, LB 874, § 12; Laws 2013, LB68, § 6.
Effective date September 6, 2013.

2-1083.01 Nursery stock distributor, defined.

Nursery stock distributor shall mean any person involved in:

(1) The acquisition and further distribution of nursery stock;

(2) The utilization of nursery stock for landscaping or purchase of nursery stock for other persons;

(3) The distribution of nursery stock with a mechanical digger, commonly known as a tree spade, or by other means;

(4) The solicitation of or taking orders for sales of nursery stock in the state; or

(5) The growing and distribution of nursery stock or active involvement in the management or supervision of a nursery.

Source: Laws 2013, LB68, § 7.
Effective date September 6, 2013.

2-1091 Enforcement of act; department; powers.

For the purpose of enforcement of the Plant Protection and Plant Pest Act or any rule or regulation, the department may:

(1) Enter at reasonable times and in a reasonable manner without being subject to any action for trespass or damages, if reasonable care is exercised, all property where plants are grown, packed, held prior to distribution, or distributed to inspect all plants, structures, vehicles, equipment, packing materials, containers, records, and labels on such property. The department may inspect and examine all records and property relating to compliance with the act. Such records and property shall be made available to the department for review at all reasonable times;

(2) In a reasonable manner, hold for inspection and take samples of any plants and associated materials which may not be in compliance with the act;

(3) Inspect or reinspect at any time or place any plants that are in the state or being shipped into or through the state and treat, seize, destroy, require treatment or destruction of, or return to the state of origin any plants in order to inhibit or prevent the movement of plant pests throughout the state;

(4) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this section;

(5) Issue a written or printed withdrawal-from-distribution order and post signs to delineate sections not marked pursuant to subsection (3) of section 2-1095 or sections of distribution locations and to notify persons of any withdrawal-from-distribution order when the department has reasonable cause to believe any lot of nursery stock is being distributed in violation of the act or any rule or regulation;

(6) Apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond;

(7) Issue a quarantine or establish a quarantine area;

(8) Cooperate and enter into agreements, including harmonization plans, with any person in order to carry out the purpose of the act;

(9) Establish a restricted plant pest list to prohibit the movement into the state of plant pests not known to occur in Nebraska and to prohibit the movement of those plant pests present in the state but known to be destructive to the plant industry;

(10) Issue European corn borer quarantine certificates, phytosanitary certificates, and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country or issue quarantine compliance agreements or European corn borer quarantine certification licenses;

(11) Inspect plants that any person desires to ship into another state or country when such person has made an application to the department for such inspection. The inspection shall determine the presence of plant pests to determine the acceptance of the plants into other states or countries. The department may accept the inspections of laboratories authorized by the department or field inspectors of the department;

(12) Certify plants or property to meet the requirements of specific quarantines imposed on Nebraska or Nebraska plants. The quarantine certification requirements shall be set forth in the rules and regulations;

(13) Until increased or decreased by rules or regulations, assess and collect fees set forth in section 2-1091.02 for inspections, services, or work performed in carrying out subdivisions (8) and (10) through (12) of this section. Inspection time shall include the driving to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection. Any fee charged to the department relating to such subdivisions shall be paid by the person requesting the inspection, services, or work. The department may, for purposes of administering such subdivisions, establish in rules and regulations inspection requirements, standards, and issuance, renewal, or revocation of licenses, certificates, or agreements necessitated by such subdivisions;

(14) Conduct continuing survey and detection programs on plant pests to monitor the population or spread of plant pests;

(15) Issue, place on probation, suspend, or revoke licenses issued or agreements entered into pursuant to the act or deny applications for such licenses or agreements pursuant to the act; and

(16) Issue orders imposing administrative fines or cease and desist orders pursuant to the act.

Source: Laws 1988, LB 874, § 20; Laws 1993, LB 406, § 11; Laws 2013, LB68, § 8.
Effective date September 6, 2013.

2-1091.01 Nursery stock distributor license; application; contents; fees; licensee duties; nursery stock; requirements; license; posting; lapse of license.

(1) A person shall not operate as a nursery stock distributor without a valid license issued by the department. Any person validly licensed as a grower, a dealer, or a broker under the Plant Protection and Plant Pest Act as it existed on the day before September 6, 2013, shall remain validly licensed until December 31, 2013.

(2) Each nursery stock distributor shall apply for a license required by subsection (1) of this section on forms furnished by the department due on January 1 for the current license year. Such application shall include the full name and mailing address of the applicant, the names and addresses of any partners, limited liability company members, or corporate officers, the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Plant Protection and Plant Pest Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location of the operation, and the signature of the applicant. A person distributing greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, shall not be required to obtain a license but may do so pursuant to section 2-10,105.

(3) A nursery stock distributor license shall expire on December 31 of each year unless previously lapsed or revoked.

(4) All applications shall be accompanied by a license fee for the first acre on which nursery stock is located. If the nursery stock distributor does not have physical possession of nursery stock, the nursery stock distributor shall pay a license fee based on one acre. Additionally the applicant shall pay an acreage fee for each additional acre on which nursery stock is located. The license fees are set forth in section 2-1091.02. If the applicant has distributed nursery stock prior to applying for a license, the applicant shall pay an additional administrative fee as set forth in section 2-1091.02.

(5) All nursery stock distributed by a nursery stock distributor shall be only sound, healthy nursery stock that is reasonably capable of growth, labeled correctly, free from injurious plant pests, and stored or displayed under conditions which maintain its vigor as provided in the rules and regulations. Any fee charged to the department for diagnostic services or shipping costs shall be paid by the nursery stock distributor.

(6) A valid copy of the nursery stock distributor's license shall be posted in a conspicuous place at the distribution location.

(7) A nursery stock distributor shall obtain a license for each distribution location.

(8) Each applicant for a nursery stock distributor license shall furnish a signed written statement that such person will acquire and distribute only nursery stock which has been distributed by a person who is duly licensed pursuant to the act or approved by an authorizing agency within the state of origin recognized by the department.

(9) Every nursery stock distributor shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is received.

(10) Each nursery stock distributor shall keep and make available for examination by the department for a period of three years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, the amount received, and the variety and place of origin of the nursery stock received and all documents accompanying each shipment indicating compliance with state or federal requirements and quarantines.

(11) A nursery stock distributor license shall lapse automatically upon a change of ownership, and the subsequent owner must obtain a new license. The nursery stock distributor license shall lapse automatically upon a change of location, and such licensee must obtain a new license. A licensee shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. A nursery stock distributor shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When a nursery stock distributor permanently ceases operating, he or she shall return the license to the department.

Source: Laws 1993, LB 406, § 12; Laws 1994, LB 884, § 3; Laws 2013, LB68, § 9.
Effective date September 6, 2013.

2-1091.02 Fees; department; powers.

(1) License fees for the Plant Protection and Plant Pest Act due on January 1, 2014, shall be the amount in column A of subsection (3) of this section.

(2) The license fees due January 1, 2015, and each January 1 thereafter shall be set by the director on or before July 1 of each year. The director may raise or lower such fees each year to meet the criteria in this subsection, but the fee shall not be greater than the amount in column B of subsection (3) of this section. The same percentage shall be applied to each category for all fee increases or decreases. The director shall use the fees in column A of subsection (3) of this section as a base for future fee increases or decreases. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

(a) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Plant Protection and Plant Pest Act; and

(b) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act.

(3) License Fees.

License Fees	A	B
Nursery stock distributor license as set forth in section 2-1091.01 for the first acre	$115	$140
Fee for additional acres	$5.00 per acre	$6.00 per acre
Distributing without obtaining a nursery stock distributor license fee	25% of the fee per month up to 100% of the license fee	

(4) Other fees for the Plant Protection and Plant Pest Act under subsection (5) of this section in effect on January 1, 2014, shall be the amount in column A of such subsection. The department may increase or decrease such fees by rules or regulations adopted and promulgated by the department. Such increases shall not result in fees greater than the amount in column B of subsection (5) of this section.

(5) Other Fees.

Other Fees	A	B
Certification fee for nursery stock growing acres as set forth in section 2-1095	Included in license fee	
Late applications for certification of nursery stock growing acres	$24 per hour $0.42 per mile	$27 per hour $0.50 per mile
Reinspections or requested inspections for nursery stock	$24 per hour $0.42 per mile	$27 per hour $0.50 per mile
Phytosanitary or export certificates set forth in section 2-1091	$30 per certificate and $7 for taking an application by telephone	$40 per certificate and $10 for taking an application by telephone
Phytosanitary or export certificate inspections and reinspections	$24 per hour $0.42 per mile	$27 per hour $0.50 per mile
European corn borer quarantine certification license set forth in section 2-1091	$50 per license, annually	$65 per license, annually
European corn borer certificate	$6.25 for packet of 25	$10.00 for packet of 25
Quarantine compliance agreements as set forth in section 2-1091	$50 per agreement annually	$65 per agreement annually
Quarantine compliance agreement inspections and reinspections	$24 per hour $0.42 per mile	$27 per hour $0.50 per mile

(6) Any fee remaining unpaid for more than one month shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees, and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Plant Protection and Plant Pest Cash Fund.

Source: Laws 2013, LB68, § 11.
Effective date September 6, 2013.

2-1092 Repealed. Laws 2013, LB 68, § 23.

2-1093 Repealed. Laws 2013, LB 68, § 23.

2-1094 Repealed. Laws 2013, LB 68, § 23.

2-1095 Nursery stock distributors; nursery stock; certification inspection; application; distribution; restrictions; treatment or destruction of stock; department; powers.

(1) All nursery stock distributors that distribute any nursery stock that they grow shall apply for an additional inspection for the certification of the Nebraska-grown nursery stock as provided in this section. The nursery stock distributor shall apply for such certification inspection of the Nebraska-grown nursery stock as part of the application for the nursery stock distributor license described in section 2-1091.01.

(2)(a) Applications for certification inspection of Nebraska-grown nursery stock that are due on January 1 pursuant to section 2-1091.01 and are not received prior to February 1 and initial applications not received prior to beginning of distribution shall be considered delinquent. Such applications shall have an inspection fee as set forth in section 2-1091.02.

(b) Inspection time shall include the driving time to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection.

(3) Each nursery stock distributor shall post signs delineating sections of all growing areas. A section shall be not larger than five acres.

(4) All growing areas within the state shall be inspected by the department at least once per year for certification and compliance with the Plant Protection and Plant Pest Act.

(5) Following the certification inspection of Nebraska-grown nursery stock, the department shall provide a copy of the plant inspection report to the nursery stock distributor specifying any area of the nursery from which nursery stock cannot be distributed or any plants which may not be distributed as nursery stock. When deemed necessary to maintain compliance with the purposes of the Plant Protection and Plant Pest Act, the department shall require the nursery stock distributor to withdraw from distribution any variety or amount of nursery stock. A reinspection may be conducted by the department at the nursery stock distributor's request and cost. The department may

also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use fees as outlined in subsection (2) of this section. The nursery stock distributor shall comply with the recommendations of the department as to the treatment or destruction of nursery stock.

(6) The department may require the treatment or destruction of any nursery stock that is infested or infected with plant pests, nonviable, damaged, or desiccated to the point of not being reasonably capable of growth.

(7) Any nursery stock on which a withdrawal-from-distribution order has been issued shall be released for distribution only by authorized department employees or after written permission has been obtained from the department. Each nursery stock distributor shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements on withdrawal-from-distribution orders. The department may withhold a license or certification of Nebraska-grown nursery stock until conditions have been met by the nursery stock distributor as specified in the plant inspection report or any other order issued by the department. A certification of Nebraska-grown stock may be issued covering portions of the nursery which are not infested or infected if the nursery stock distributor agrees to treat, destroy, or remove as specified by the department those plants found to be infested or infected.

Source: Laws 1988, LB 874, § 24; Laws 1993, LB 406, § 15; Laws 2013, LB68, § 10.
Effective date September 6, 2013.

2-1096 Repealed. Laws 2013, LB 68, § 23.

2-1097 Repealed. Laws 2013, LB 68, § 23.

2-1098 Repealed. Laws 2013, LB 68, § 23.

2-1099 Repealed. Laws 2013, LB 68, § 23.

2-10,100 Repealed. Laws 2013, LB 68, § 23.

2-10,100.01 Repealed. Laws 2013, LB 68, § 23.

2-10,100.02 Repealed. Laws 2013, LB 68, § 23.

2-10,101 Repealed. Laws 2013, LB 68, § 23.

2-10,102 Collectors; nursery stock distributor's license required; inspection.

Collectors shall be required to obtain a nursery stock distributor's license and shall be required to apply for an additional inspection for the certification of the collected nursery stock as provided in section 2-1095. All collected nursery stock shall be labeled as such.

Source: Laws 1988, LB 874, § 31; Laws 2013, LB68, § 12.
Effective date September 6, 2013.

2-10,103 Nursery stock distributor; duties.

A nursery stock distributor shall:

(1) Comply with the Plant Protection and Plant Pest Act and the rules and regulations:

(a) In the care of nursery stock;

(b) In the distribution of nursery stock including nursery stock that has been withdrawn from distribution;

(c) Regarding treatment or destruction of nursery stock as required by a withdrawal-from-distribution order;

(d) In maintaining the nursery stock in a manner accessible to the department; and

(e) In the payment of license fees;

(2) Comply with any order of the director issued pursuant to the act;

(3) Not distribute nursery stock obtained from an unlicensed nursery stock distributor;

(4) Not allow the license to be used by any person other than the person to whom it was issued; and

(5) Not interfere with the department in the performance of its duties.

Source: Laws 1988, LB 874, § 32; Laws 1993, LB 406, § 22; Laws 2013, LB68, § 13.
Effective date September 6, 2013.

2-10,103.01 Nursery stock distributor; disciplinary actions; procedures.

(1) A nursery stock distributor may be placed on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to section 2-10,103.02 after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and

(c) The director finds that issuing the specified order is appropriate based on the hearing record or the available information if the hearing is waived by the nursery stock distributor.

(2) A nursery stock distributor may be suspended after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or the available information if the hearing is waived by the nursery stock distributor.

(3) A license may be immediately suspended and the director may order the nursery stock distributor's operation to cease prior to hearing when:

(a) The director determines an immediate danger to the public health, safety, or welfare exists; and

(b) The nursery stock distributor receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the nursery stock distributor may request in writing a date for a hearing and the director shall consider the interests of the nursery stock distributor when the director establishes the date and time of the hearing, except that no hearing shall be

held sooner than is reasonable under the circumstances. When a nursery stock distributor does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the nursery stock distributor of the date and time of such hearing.

(4) A license may be revoked after:

(a) The director determines the nursery stock distributor has committed serious, repeated, or multiple violations of any of the requirements of section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the nursery stock distributor.

(5) Any nursery stock distributor whose license has been suspended shall cease operations until the license is reinstated. Any nursery stock distributor whose license is revoked shall cease operating until a new license is issued.

(6) The director may terminate a proceeding to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section at any time if the reasons for such proceeding no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a nursery stock distributor may no longer be subject to the director's order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(7) Proceedings to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section shall not preclude the department from pursuing other civil or criminal actions.

Source: Laws 1993, LB 406, § 23; Laws 2013, LB68, § 14.
Effective date September 6, 2013.

2-10,103.02 Administrative fine; collection; use.

(1) The director may issue an order imposing an administrative fine on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the Plant Protection and Plant Pest Act or rules and regulations adopted and promulgated pursuant to the act in an amount which shall not exceed one thousand dollars for each violation. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or such rules and regulations. In determining whether to impose an administrative fine and, if a fine is imposed, the amount of the fine, the director shall take into consideration (a) the seriousness of the violation, (b) the extent to which the person derived financial gain as a result of his or her failure to comply, (c) the extent of intent, willfulness, or negligence by the person in the violation, (d) the likelihood of the violation reoccurring, (e) the history of the person's failure to comply, (f) the person's attempts to prevent or limit his or her failure to comply, (g) the person's willingness to correct violations, (h) the nature of the person's disclosure of violations, (i) the person's cooperation with investigations of his or her

failure to comply, and (j) any factors which may be established by the rules and regulations.

(2) The department shall remit administrative fines collected under the act to the State Treasurer on a monthly basis for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) Any administrative fine imposed under the Plant Protection and Plant Pest Act and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The lien shall attach to the real estate of the violator when notice of such lien is filed and indexed against the real estate in the office of the register of deeds or county clerk in the county where the real estate is located.

Source: Laws 1993, LB 406, § 24; Laws 2013, LB68, § 15.
Effective date September 6, 2013.

2-10,103.04 Notice or order; service; notice; contents; hearings; procedure; new hearing.

(1) Any notice or order provided for in the Plant Protection and Plant Pest Act shall be personally served on the person holding the nursery stock distributor license, the person named in the notice, or the person authorized by the person holding the nursery stock distributor license to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the person holding the nursery stock distributor license, the person named in the notice, or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the person holding the nursery stock distributor license or the person named in the notice is charged.

(3) A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing provided for in the act shall set forth the time and place of the hearing except as otherwise provided in subsection (3) of section 2-10,103.01. A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to such hearing shall include notice that the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing may be waived pursuant to subsection (5) of this section. A notice of such right to a hearing shall include notice of the potential actions that may be taken against the person holding the nursery stock distributor license or the person named in the notice.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) The person holding the nursery stock distributor license or the person named in the notice shall be deemed to waive the right to a hearing if such

person does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the person shows the director that the person had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the person holding the nursery stock distributor license or the person named in the notice waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order.

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

Source: Laws 1993, LB 406, § 26; Laws 2013, LB68, § 16.
Effective date September 6, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,104 Foreign distributor; reciprocity; department; reciprocal agreements.

(1) Any person residing outside the state and desiring to solicit orders or distribute nursery stock in Nebraska may do so if:

(a) Such person is duly licensed under the nursery laws of the state where the nursery stock originates and the laws of that state are essentially equivalent to the laws of Nebraska as determined by the department; and

(b) Such person complies with the Plant Protection and Plant Pest Act and the rules and regulations on all nursery stock distributed in Nebraska.

(2) The department may cooperate with and enter into reciprocal agreements with other states regarding licensing and movement of nursery stock. Reciprocal agreements with other states shall not prevent the department from prohibiting the distribution in Nebraska of nursery stock which fails to meet the minimum criteria for nursery stock of Nebraska-licensed nursery stock distributors.

Source: Laws 1988, LB 874, § 33; Laws 2013, LB68, § 17.
Effective date September 6, 2013.

2-10,105 Optional inspections; nursery stock distributor's license; optional issuance.

(1) Optional inspections of plants may be conducted by the department upon request by any persons desiring such inspection. A fee as set forth in subsection (2) of section 2-1095 shall be charged for such an inspection.

(2) Any person who desires a nursery stock distributor's license for any greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, may apply for such license to the department. The inspection of such plants shall conform to

the same requirements that apply to the inspection of nursery stock as set forth in section 2-1095. For persons who grow or distribute both nursery stock and greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, one license shall be issued if the annual inspection of such plants is conducted concurrently with the nursery stock inspection and the other requirements of the Plant Protection and Plant Pest Act are met. If a reinspection trip is required, the applicant shall be assessed a reinspection fee as outlined in subsection (2) of section 2-1095.

Source: Laws 1988, LB 874, § 34; Laws 1993, LB 406, § 27; Laws 2013, LB68, § 18.
Effective date September 6, 2013.

2-10,106 Importation and distribution; labeling requirements; exception; department; powers.

(1) It shall be unlawful for any person, including any carrier transporting nursery stock, to bring into or cause to be brought into Nebraska any nursery stock unless such shipment is plainly and legibly marked with a label showing the name and address of the consignor and consignee, the nature and quantity of the contents, the place of origin, and the license or its equivalent issued by the recognized authorizing agency stating that the nursery from which the nursery stock originates has been inspected.

(2) It shall be unlawful for any person to distribute in Nebraska nursery stock for the purpose of resale in Nebraska without meeting the labeling criteria stated in this section.

(3) The requirements of this section shall not apply to nursery stock distributed to the final consumer at a distribution location where a valid nursery stock distributor's license has been conspicuously posted.

(4) The department may cause to be held for inspection any plants, regardless of proper labeling according to the Plant Protection and Plant Pest Act, if there is reason to believe they are infested or infected with plant pests. Such plants shall be held only for a period of time reasonable for proper inspection and any treatment deemed necessary by the department. The department shall not be held responsible for costs incurred by treatment or delay.

(5) In carrying out this section, the department may intercept or detain any person or property including vehicles or vessels reasonably believed to be carrying any plants or any other articles capable of carrying plant pests. The department may hold for treatment, destroy, or otherwise dispose of any plants, if found infested or infected with plant pests, at the owner's cost.

Source: Laws 1988, LB 874, § 35; Laws 2013, LB68, § 19.
Effective date September 6, 2013.

2-10,111 Costs; liability.

(1) All costs associated with treating, seizing, or destroying any plant or issuing and enforcing any withdrawal-from-distribution order for any plant, which plant is in violation of the Plant Protection and Plant Pest Act or the rules and regulations adopted and promulgated pursuant to the act, shall be the responsibility of the person in possession of the plant. The department shall be

reimbursed by the person in possession of the plant for the actual cost incurred by the department in enforcing the act or such rules and regulations.

(2) All costs related to enforcement of the act and such rules and regulations shall be the responsibility of the person violating the act. The department shall be reimbursed by persons violating the act or such rules and regulations for the actual cost incurred by the department in enforcing the act.

(3) The department shall not be liable for any costs incurred by any person due to any departmental actions relating to the enforcement of the act or such rules and regulations.

Source: Laws 1988, LB 874, § 40; Laws 2013, LB68, § 20.
Effective date September 6, 2013.

2-10,115 Violations; penalties; appeal of department order; procedure.

(1) Any person shall be guilty of a Class IV misdemeanor for the first violation and a Class II misdemeanor for any subsequent violation of the same nature and in violation of the Plant Protection and Plant Pest Act if that person:

(a) Distributes nursery stock without a nursery stock distributor license issued under the Plant Protection and Plant Pest Act;

(b) Receives nursery stock for further distribution from any person who has not been duly licensed or approved under the act;

(c) Uses any license issued by the department after it has been revoked or has expired, while the licensee was under suspension, or for purposes other than those authorized by the act;

(d) Offers any hindrance or resistance to the department in the carrying out of the act, including, but not limited to, denying or concealing information or denying access to any property relevant to the proper enforcement of the act;

(e) Allows any plant declared a nuisance plant as outlined in section 2-10,107 to exist on such person's property or distributes any such plants or materials capable of harboring plant pests;

(f) Acts as a nursery stock distributor and:

(i) Fails to comply with provisions for treatment or destruction of nursery stock as required by withdrawal-from-distribution orders;

(ii) Distributes any quarantined nursery stock or nursery stock for which a withdrawal-from-distribution order has been issued;

(iii) Distributes nursery stock for the purpose of further distribution to any person in Nebraska not licensed as a nursery stock distributor; or

(iv) Fails to pay all fees required by the act and the rules and regulations;

(g) Distributes nursery stock which is not sound, healthy, reasonably capable of growth, labeled correctly, and free from injurious plant pests;

(h) Distributes plants which have been quarantined or are in a quarantined area;

(i) Violates any item set forth as unlawful in section 2-10,106;

(j) Distributes biological control agents or genetically engineered plant organisms without a permit if a permit is required by the act;

(k) Fails to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act;

(l) Violates any order of the director after such order has become final or upon termination of any review proceeding when the order has been sustained by a court of law; or

(m) Violates any other provision of the Plant Protection and Plant Pest Act.

(2) Any lot or shipment of plants not in compliance with the Plant Protection and Plant Pest Act, the rules and regulations, or both shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which such plants are located. If the court finds the plants to be in violation of the act, the rules and regulations, or both and orders the condemnation of the plants, such plants shall be disposed of in any manner deemed necessary by the department. In no instance shall the disposition of the plants be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such plants or for permission to treat or relabel the plants to bring such plants into compliance with the act, the rules and regulations, or both.

(3) It shall be the duty of the Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of a violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, subdivision (6) of section 2-1091, or subsection (3) of section 2-10,103.02 or any combination thereof.

(4) Any person adversely affected by an order made by the department pursuant to the Plant Protection and Plant Pest Act may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1988, LB 874, § 44; Laws 1993, LB 406, § 29; Laws 2013, LB68, § 21.
Effective date September 6, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,116.01 Repealed. Laws 2013, LB 68, § 23.

ARTICLE 26
PESTICIDES

Section
2-2624. Terms, defined.
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2-2641. Private applicator; qualifications; application for license; requirements; fee.
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2-2646. Prohibited acts.
2-2646.01. Pesticide business; owner or operator; liability.

2-2624 Terms, defined.

For purposes of the Pesticide Act:

(1) Active ingredient means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;

(c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;

(2) Administrator means the Administrator of the United States Environmental Protection Agency;

(3) Adulterated means:

(a) That the strength or purity of a pesticide falls below the professed standard of quality as expressed on the labeling under which a pesticide is sold;

(b) That any substance is substituted wholly or in part for the pesticide; or

(c) That any valuable constituent of the pesticide has been wholly or in part abstracted;

(4) Animal means a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;

(5) Antidote means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk means any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Commercial applicator means any applicator required by the act to obtain a commercial applicator license;

(9) Dealer means any manufacturer, registrant, or distributor who is required to be licensed as such under section 2-2635;

(10) Defoliant means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(11) Department means the Department of Agriculture;

(12) Desiccant means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(13) Device means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal

life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device does not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

(14) Director means the Director of Agriculture or his or her designee;

(15) Distribute means to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(16) Environment includes water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(17) Federal act means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it, as the act and regulations existed on January 1, 2013;

(18) Federal agency means the United States Environmental Protection Agency;

(19) Fungus means any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, and bacteria, but does not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(20) Inert ingredient means an ingredient that is not an active ingredient;

(21) Ingredient statement means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, a statement of the percentage of total water-soluble arsenic calculated as elementary arsenic shall be included;

(22) Insect means any of the numerous small invertebrate animals generally having a segmented body and for the most part belong to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(23) Label means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(24) Labeling means all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(25) License holder means any person licensed under the Pesticide Act;

(26) Licensed certified applicator means any person licensed and certified under the act as a commercial applicator, noncommercial applicator, or private applicator;

(27) Misbranded means that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator pursuant to 7 U.S.C. 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under 7 U.S.C. 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under 7 U.S.C. 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or 7 U.S.C. 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 2-2628 and 2-2629 and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode means an invertebrate animal of the phylum Nemathelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator means (a) any applicator who is not a commercial applicator and uses restricted-use pesticides only on property owned or controlled by his or her employer or for a federal entity or state agency or a political subdivision of the state or (b) any employee or other person acting on behalf of a political subdivision of the state who is not a commercial applicator who uses pesticides for outdoor vector control;

(30) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest means:

(a) Any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life, excluding humans; or

(b) Any virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals, as defined by the department;

(32) Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, including any biological control agent. Pesticide does not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the section existed on January 1, 2013, that has been determined by the Secretary of Health and Human Services to be a new animal drug by regulation establishing conditions of use for the article, or that is an animal feed within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), as the section existed on January 1, 2013, bearing or containing a new animal drug;

(33) Pesticide management plan means a management plan for a specific, identified pesticide to implement a strategy to prevent, monitor, evaluate, and

mitigate (a) any occurrence of the pesticide or pesticide breakdown products in ground water and surface water in the state or (b) any other unreasonable adverse effect of the pesticide on humans or the environment;

(34) Plant regulator means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(35) Pollute means to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to humans, the environment, or the public health, safety, or welfare;

(36) Private applicator means an applicator who is not a commercial applicator or a noncommercial applicator and uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

(37) Property means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any vehicle used for transportation;

(38) Restricted-use pesticide means a pesticide classified as a restricted-use pesticide by the federal agency, a state-limited-use pesticide, or any pesticide for which an exemption under section 136p of the federal act has been granted;

(39) State management plan means a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(40) State pesticide plan means the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(41) State-limited-use pesticide means any pesticide included on a list of state-limited-use pesticides by the department pursuant to a pesticide management plan;

(42) Unreasonable adverse effect on humans or the environment means any unreasonable risk to humans or the environment taking into account the severity and longevity of adverse effects of use of the pesticide and also taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. The costs and benefits of a public health pesticide shall also weigh any risks of the use of the pesticide against the health risks to be mitigated or controlled by the use of the pesticide;

(43) Vector means any organism capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including mosquitoes, flies, fleas, cockroaches, ticks, mites, other insects, mice, and rats; and

(44) Weed means any plant that grows where not wanted.

Source: Laws 1993, LB 267, § 32; Laws 1993, LB 588, § 3; Laws 1994, LB 884, § 7; Laws 2002, LB 436, § 3; Laws 2003, LB 157, § 1; Laws 2006, LB 874, § 2; Laws 2013, LB69, § 1.
Operative date October 1, 2013.

2-2626 Department; powers and duties.

The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Department of Natural Resources, or the Department of Health and Human Services, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health and Human Services shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2013. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health and Human Services pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under 7 U.S.C. 136i-1 of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems

necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. 171, as the regulation existed on January 1, 2013; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under 7 U.S.C. 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any application equipment, building, or place owned, controlled, or operated by any person engaging in an activity regulated by the act if, from probable cause, it appears that the application equipment, building, or place contains a pesticide;

(6) To sample, inspect, make analysis of, and test any pesticide found within this state;

(7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(9) To impose or levy an administrative fine of not more than five thousand dollars for each violation on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take reasonable measures to assess and collect all fees and fines prescribed by the act and the rules or regulations adopted under the act;

(12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

(13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(14) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;

(15) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(16) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(17) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(18) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(19) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(20) To issue a cease and desist order pursuant to section 2-2649;

(21) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(22) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(23) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB296, § 17; Laws 2010, LB254, § 7; Laws 2013, LB69, § 2.
Operative date October 1, 2013.

2-2629 Registration; application; contents; department; powers; confidentiality; agent for service of process.

(1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The name of the pesticide;

(c) Two complete copies of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant if the pesticide is not required by federal law to be registered under a use classification;

(f) A designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(4) The department may require additional information including a full description of the tests conducted and the results of the tests on which claims are based, either before or after approving the registration of a pesticide. The department may request that additional tests or field monitoring be conducted in Nebraska ecosystems, or reasonably similar ecosystems, in order to determine the validity of assumptions used to register pesticides under the federal act.

(5) Information collected under subsection (3) or (4) of this section shall not be public records. The department shall not reveal such information to other

than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

Source: Laws 1993, LB 267, § 33; Laws 1993, LB 588, § 8; Laws 2002, LB 436, § 6; Laws 2006, LB 874, § 5; Laws 2009, LB100, § 1; Laws 2013, LB69, § 3.
Operative date October 1, 2013.

2-2634 Registration and renewal fees; late registration fee.

(1) As a condition to registration or renewal of registration as required by sections 2-2628 to 2-2633, an applicant shall pay to the department a fee of one hundred sixty dollars for each pesticide to be registered, except that the fee may be increased or decreased by rules and regulations adopted and promulgated pursuant to the Pesticide Act. In no event shall such fee exceed two hundred ten dollars for each pesticide to be registered.

(2) All fees collected under subsection (1) of this section shall be remitted to the State Treasurer for credit as follows:

(a) Thirty dollars of such fee to the Noxious Weed Cash Fund as provided in section 2-958;

(b) Sixty dollars of such fee to the Buffer Strip Incentive Fund as provided in section 2-5106;

(c) Fifty-five dollars of such fee to the Natural Resources Water Quality Fund; and

(d) The remainder of such fee to the Pesticide Administrative Cash Fund.

(3) If a person fails to apply for renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, for each product to be renewed in addition to the renewal fee. The purpose of the late registration fee is to cover the administrative costs associated with collecting fees, and all money collected as a late registration fee shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

Source: Laws 1993, LB 588, § 13; Laws 1998, LB 1126, § 12; Laws 2001, LB 329, § 4; Laws 2006, LB 874, § 6; Laws 2013, LB69, § 4.
Operative date October 1, 2013.

2-2635 Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process.

(1) Except as provided in subsection (2) of this section, a person shall not distribute at wholesale or retail or possess pesticides with an intent to distribute them without a pesticide dealer license for each distribution location. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his, her, or its principal out-of-state location or outlet.

(2) The requirements of subsection (1) of this section shall not apply to:

(a) A commercial applicator or noncommercial applicator licensed under sections 2-2636 to 2-2642 who uses restricted-use pesticides only as an integral part of a pesticide application service and does not distribute any unapplied pesticide;

(b) A federal, state, county, or municipal agency using restricted-use pesticides only for its own program; or

(c) Persons who sell only pesticide products in containers holding fifty pounds or less by weight or one gallon or less by volume and do not sell any restricted-use pesticides or bulk pesticides.

(3) A pesticide dealer may distribute restricted-use pesticides only to:

(a) A licensed pesticide dealer;

(b) A licensed certified applicator issued a license with the appropriate category for using the restricted-use pesticide being distributed;

(c) An applicator issued a license by another state with the appropriate category for using the restricted-use pesticide being distributed;

(d) A noncertified applicator authorized by the Pesticide Act to apply restricted-use pesticides if the licensed certified applicator supervising the noncertified applicator is issued a license with the appropriate category for using the restricted-use pesticide being distributed; or

(e) Any other person if the pesticide dealer maintains records set out in rules and regulations adopted and promulgated pursuant to the act requiring the person to verify in writing that:

(i) The restricted-use pesticide will be delivered to an applicator described in subdivision (3)(b), (c), or (d) of this section; and

(ii) The applicator receiving the restricted-use pesticide acknowledges and agrees to the distribution.

(4) A pesticide dealer license shall expire on December 31 of each year, unless it is suspended or revoked before that date. Such license shall not be transferable to another person or location and shall be prominently displayed to the public in the pesticide dealer's place of business.

(5) If the pesticide dealer has had a license suspended or revoked, or has otherwise had a history of violations of the Pesticide Act, the department may require an additional demonstration of dealer qualifications prior to issuance or renewal of a license to such person.

(6) Application for an initial pesticide dealer license shall be submitted to the department prior to commencing business as a pesticide dealer. Application for renewal of a pesticide dealer license shall be submitted to the department by January 1 of each year. All applications shall be accompanied by an annual license fee of twenty-five dollars. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred dollars per license. Application shall be on a form prescribed by the department and shall include the full name of the person applying for such license. If such applicant is a partnership, limited liability company, association, corporation, or organized group of persons, the full name of each member of the firm, partnership, or limited liability company or of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of each outlet to be licensed, the principal business address of the applicant, the name of the person

domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department.

An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

If an application for renewal of a pesticide dealer license is not filed before January 1 of the year for which the license is to be issued, an additional fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, shall be paid by the applicant before the license may be issued. The purpose of the additional fee is to cover the administrative costs associated with collecting fees.

An application for a duplicate pesticide dealer's license shall be accompanied by a nonrefundable application fee of ten dollars.

All fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

(7) Each licensed pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and distribution of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, modification, or revocation after a hearing for any violation of the act, whether committed by the dealer or by the dealer's officer, agent, or employee.

(8) The department shall require each pesticide dealer to maintain records of the dealer's purchases and distribution of all restricted-use pesticides and may require such records to be kept separate from other business records. The department may prescribe by rules and regulations the information to be included in the records. The dealer shall keep such records for a period of three years and shall provide the department access to examine such records and a copy of any record on request.

Source: Laws 1993, LB 267, § 34; Laws 1993, LB 588, § 14; Laws 1994, LB 884, § 8; Laws 1997, LB 752, § 54; Laws 2001, LB 329, § 5; Laws 2002, LB 436, § 8; Laws 2013, LB69, § 5.
Operative date October 1, 2013.

2-2636 Pesticide applicators; restrictions; department; duties; reciprocity.

(1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. 171, as the regulation existed on January 1, 2013, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. Residents of the State of Nebraska are not eligible for reciprocal certification. The department may waive part or all of any license certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) Licensed as a commercial or noncommercial applicator and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use;

(b) Licensed as a private applicator; or

(c) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use pesticides for outdoor vector control unless the applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(5) In order to receive a commercial, noncommercial, or private applicator license, a person shall be at least sixteen years of age.

Source: Laws 1993, LB 588, § 15; Laws 2002, LB 436, § 9; Laws 2006, LB 874, § 7; Laws 2009, LB100, § 2; Laws 2013, LB69, § 6. Operative date October 1, 2013.

2-2638 Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.

(1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and shall be a commercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control pesticides on the property of another person in the State of Nebraska for hire or compensation shall be a commercial applicator license holder, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. If the applicant is an individual, the application shall include the applicant's date of birth. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 17; Laws 1997, LB 752, § 55; Laws 2001, LB 329, § 6; Laws 2002, LB 436, § 11; Laws 2006, LB 874, § 8; Laws 2009, LB100, § 3; Laws 2013, LB69, § 7.
Operative date October 1, 2013.

2-2639 Noncommercial applicator license; application; denial, when; resident agent for service of process.

(1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and shall be a noncommercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. If the applicant is an individual, the application shall include the applicant's date of birth. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed an examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(5) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 18; Laws 1997, LB 752, § 56; Laws 2002, LB 436, § 13; Laws 2006, LB 874, § 9; Laws 2009, LB100, § 4; Laws 2013, LB69, § 8.
Operative date October 1, 2013.

2-2641 Private applicator; qualifications; application for license; requirements; fee.

(1) A person shall be deemed to be a private applicator if the person uses a restricted-use pesticide in the State of Nebraska for the purpose of producing an agricultural commodity:

(a) On property owned or rented by the person or person's employer or under the person's general control; or

(b) On the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(2) An employee shall qualify as a private applicator under subdivision (1)(a) of this section only if he or she provides labor for the pesticide use but does not provide the necessary equipment or pesticides.

(3) Every person applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. If the applicant is an individual, the application shall include the applicant's date of birth.

(4) Application for an original or renewal private applicator license shall be made to the department and accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

Source: Laws 1993, LB 588, § 20; Laws 1997, LB 752, § 57; Laws 2001, LB 329, § 7; Laws 2002, LB 436, § 15; Laws 2006, LB 874, § 10; Laws 2009, LB100, § 5; Laws 2013, LB69, § 9.
Operative date October 1, 2013.

2-2642 Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.

(1) Each commercial, noncommercial, and private applicator license shall expire on April 15 following the third year in which it was issued.

(2) Except as provided by subsection (3) of this section, a person having a valid commercial or noncommercial applicator license may renew the license for another three-year period by:

(a) Paying to the department an amount equal to the license fee required by section 2-2638 for commercial applicator licenses or section 2-2639 for noncommercial applicator licenses, if any; and

(b)(i) Undertaking the training approved by the department; or

(ii) Submitting to retesting prior to renewal of the license.

(3) Any person who allows his or her commercial or noncommercial applicator license to expire shall be required to submit to testing prior to the renewal of the license.

(4) The application for renewal of a private applicator license shall be the same as the application for an initial license.

(5) Notwithstanding sections 2-2636 to 2-2642, any individual required to be a licensed certified applicator may use pesticides as a noncertified applicator for only one consecutive sixty-day period of time if:

(a) The individual or his or her employer applies to the department for a license as a licensed certified applicator within ten days of making the first pesticide use. Such license application shall include the name and license number of the licensed certified applicator who is supervising the noncertified applicator;

(b) All pesticide uses made by an individual as a noncertified applicator are made under the direct supervision of a licensed certified applicator; and

(c) The licensed certified applicator provides such training and supervision as is necessary to:

(i) Determine the level of experience and knowledge of the noncertified applicator in the use of a pesticide;

(ii) Provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his or her direct supervision;

(iii) Accompany the noncertified applicator to at least one site which would be typical of each type of pesticide use that the noncertified applicator performs;

(iv) Be accessible by voice or electronic means to provide further instructions at all times during the noncertified applicator's use of the pesticide; and

(v) Be able to be physically on the site, should the need arise, where the pesticide use or storage is taking place within a reasonable period of time as established by the director by rules and regulations. Both the licensed certified applicator and noncertified applicator shall be responsible for the acts of the noncertified applicator and each shall be subject to all fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the act. The department may deny or suspend the use of pesticides by a noncertified applicator if it has reasonable cause to believe that such person may not become eligible to become a licensed certified applicator or uses any pesticide in violation of the act.

Source: Laws 1993, LB 588, § 21; Laws 2002, LB 436, § 16; Laws 2013, LB69, § 10.
Operative date October 1, 2013.

2-2646 Prohibited acts.

It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;

(d) A pesticide that is adulterated;

(e) A pesticide or device that is misbranded;

(f) A pesticide in a container that is unsafe due to damage;

(g) A pesticide which differs from its composition as registered; or

(h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;

(2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

(3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

(4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to:

(a) Use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling if the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency or, if the pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for preconstruction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with 7 U.S.C. 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act whether or not the person committing the act is a licensed certified applicator;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to obtain a license or to pay all fees and fines as prescribed by an order of the director, the act, and the rules and regulations adopted and promulgated pursuant to the act;

(12) To fail to keep or refuse to make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(13) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(14) To violate any state management plan or pesticide management plan developed or approved by the department;

(15) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

(16) To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;

(17) To fail to follow any order of the department;

(18) Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide on property without the permission of the owner or lawful tenant. Applications for outdoor vector control authorized by a federal or state agency or political subdivision shall not be in violation of this subdivision when the application is made from public access property and cannot practically be confined to public property;

(19) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act;

(20) To alter or falsify all or part of a license issued by the department; and

(21) To violate any other provision of the act.

Source: Laws 1993, LB 588, § 25; Laws 2002, LB 436, § 24; Laws 2003, LB 157, § 2; Laws 2006, LB 874, § 12; Laws 2009, LB100, § 7; Laws 2010, LB254, § 8; Laws 2013, LB69, § 11.
Operative date October 1, 2013.

Cross References

Environmental Protection Act, see section 81-1532.

2-2646.01 Pesticide business; owner or operator; liability.

Any person who owns or operates a business that uses pesticides on the property of another person for hire or compensation shall be responsible for the acts or omissions of anyone using a pesticide for such business. Such person shall be subject to the same fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the act as the applicator.

Source: Laws 2002, LB 436, § 12; Laws 2013, LB69, § 12.
Operative date October 1, 2013.

2-2656 Nebraska aerial pesticide business license; application; form; contents; fee; resident agent.

(1) An application for an initial or renewal Nebraska aerial pesticide business license shall be submitted to the department prior to the commencement of aerial spraying operations, and an application for renewal of a Nebraska aerial pesticide business license shall be submitted to the department before commencement of application of pesticides. The application shall be accompanied by an annual license fee of one hundred dollars. The license fee may be increased by the director after a public hearing is held outlining the reason for any proposed change in the fee, except that the fee shall not exceed one hundred fifty dollars. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund. The application shall be on a form prescribed by the department and shall include the following:

(a) The full name and permanent mailing address of the person applying for such license. If such applicant is an individual, the application shall include the applicant's personal mailing address. If such applicant is not an individual, the full name of each partner or member or the full name of the principal officers shall be given on the application;

(b) The location of the applicant's principal departure location and any additional departure locations utilized for aerial spraying operations to be conducted within Nebraska identified by one of the following: Global Positioning System coordinates, legal description, local address of the site, or airport identifier;

(c) A copy of the applicant's agricultural aircraft operator certificate issued pursuant to 14 C.F.R. part 137 or evidence the applicant holds such a certificate issued by the Federal Aviation Administration;

(d) The aircraft registration number issued by the Federal Aviation Administration pursuant to 14 C.F.R. part 47 of all aircraft owned, rented, or leased by the applicant to be utilized for aerial pesticide applications and all other aircraft utilized in aerial spraying operations conducted by the applicant;

(e) The Nebraska commercial applicator certificate number and current Federal Aviation Administration commercial pilot certificate number of all persons operating aircraft for the aerial application of pesticides during any aerial spraying operations conducted by the applicant; and

(f) Such other information as deemed necessary by the director to determine the suitability of the applicant for licensure as an aerial pesticide business.

(2) An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 2010, LB254, § 3; Laws 2013, LB69, § 13.
Operative date October 1, 2013.

ARTICLE 38

MARKETING, DEVELOPMENT, AND PROMOTION OF AGRICULTURAL PRODUCTS

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

2-3812 Nebraska Agricultural Products Marketing Cash Fund; created; use; investment.

There is hereby created the Nebraska Agricultural Products Marketing Cash Fund. The fund shall consist of administrative costs collected under subsection (4) of section 54-742 and money appropriated by the Legislature which is received as gifts or grants or collected as fees or charges from any source, including federal, state, public, and private. The fund shall be utilized for the purpose of carrying out the Nebraska Agricultural Products Marketing Act and for purposes of subsection (4) of section 54-742. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1982, LB 942, § 1; Laws 1988, LB 807, § 7; Laws 1995, LB 7, § 21; Laws 2013, LB423, § 1.
Effective date September 6, 2013.

Cross References

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

ARTICLE 39

MILK

(c) DAIRY INDUSTRY DEVELOPMENT ACT

(d) NEBRASKA MILK ACT

(c) DAIRY INDUSTRY DEVELOPMENT ACT

2-3951 Nebraska Dairy Industry Development Board; created; members; qualifications.

The Nebraska Dairy Industry Development Board is hereby created. Members of the board shall (1) be residents of Nebraska, (2) be at least twenty-one years of age, (3) have been actually engaged in the production of milk in this state for at least five years, and (4) derive a substantial portion of their income from the production of milk in Nebraska. Board members shall be nominated and appointed as provided in sections 2-3951.01 to 2-3951.04.

Source: Laws 1992, LB 275, § 4; Laws 2004, LB 836, § 2; Laws 2013, LB70, § 1.
Effective date March 21, 2013.

2-3951.01 Board members; appointment; terms; officers; expenses.

(1) Members of the board shall, as nearly as possible, be representative of all first purchasers of milk and individual producer-processors in the state and, to the extent practicable, result in equitable representation of the various interests of milk producers both in terms of the manner in which milk is marketed and geographic distribution of milk production units in the state.

(2) The terms of the members of the board shall be three years, except that the first term of the initial and additional members of the board shall be staggered so that one-third of the members are appointed each year. The number of years for the first term of new and additional members shall be determined by the Governor. Once duly appointed and qualified, no member's term shall be shortened or terminated by any subsequent certification by the Department of Agriculture of milk production units from which a first purchaser of milk purchases milk.

(3) The Director of Agriculture or his or her designee shall be an ex officio member of the board but shall have no vote in board matters.

(4) Members of the board shall elect from among the members a chairperson, a vice-chairperson, and such other officers as they deem necessary and appropriate.

(5) Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2004, LB 836, § 3; Laws 2013, LB70, § 2.
Effective date March 21, 2013.

2-3951.02 Board members; nomination and appointment.

(1) Members of the board shall be nominated and appointed as follows:

(a) Each first purchaser of milk which purchases milk from at least twenty-one milk producers may submit to the Governor the names of up to two nominees for each forty milk production units, or major portion thereof, from which the first purchaser purchases milk. The Governor shall appoint one member for each forty production units, or major portion thereof, from nominees submitted pursuant to this subdivision, except that if milk production units certified by the Department of Agriculture have decreased so that each board member appointed pursuant to this subdivision represents less than a major portion of forty production units, the Governor shall maintain representation of one member for each forty production units, or major portion thereof, by not filling a vacancy caused by a member's term expiring; and

(b) All other first purchasers of milk and individual producer-processors who are not included among milk production units claimed by a first purchaser of milk entitled to submit nominees under subdivision (1)(a) of this section shall be combined as a group for the purpose of submitting nominees, and each first purchaser and individual producer-processor of the group may nominate up to two nominees. The Governor shall appoint two members from nominees submitted pursuant to this subdivision.

(2) Whenever the number of members of the board as determined by subsection (1) of this section results in less than seven members, the Governor shall appoint a member or members from the state at large to maintain membership of the board at seven members. Whenever such appointment is required, the board shall call for and submit a list of two or more nominees for each additional member needed to the Governor, and the Governor shall appoint a member or members from the nominees submitted pursuant to this subsection.

(3) Nominations in the case of term expiration or new or at-large membership and for all other vacancies shall be provided according to the process prescribed in section 2-3951.04. The Governor may choose the members of the board from the nominees submitted or may reject all nominees. If the Governor rejects all nominees, names of nominees shall again be provided to the Governor until the appointment is filled.

Source: Laws 2004, LB 836, § 4; Laws 2013, LB70, § 3.
Effective date March 21, 2013.

2-3951.03 Board members; vacancies.

(1) A vacancy on the board exists in the event of the death, incapacity, removal, or resignation of any member; when a member ceases to be a resident of Nebraska; when a member ceases to be a producer in Nebraska; or when the member's term expires. Members whose terms have expired shall continue to serve until their successors are appointed and qualified, except that if such a vacancy will not be filled, as determined by the Governor under section 2-3951.02, the member shall not serve after the expiration of his or her term.

(2) For purposes of filling vacancies on the board, the Governor shall appoint one member from up to two nominees submitted by the vacating member's nominator under section 2-3951.02. In the event of a vacancy, the board shall

certify to the vacating member's nominator that such a vacancy exists and shall request nominations to fill the vacancy for the remainder of the unexpired term or for a new term, as the case may be.

Source: Laws 2004, LB 836, § 5; Laws 2013, LB70, § 4.
Effective date March 21, 2013.

2-3951.04 Board members; nominations; notification; procedure.

(1) When nominations for board members are required, written notification shall be given to each producer represented or to be represented by such member, including an at-large member. The first purchaser or purchasers of milk shall notify each producer from whom the first purchaser buys milk that each producer may submit written nominations. If the group represented is a combination of first purchasers of milk and individual producer-processors or if the member is an at-large member, the individual producer-processors shall receive notification from the Department of Agriculture.

(2) Nominations shall be in writing and shall contain an acknowledgment and consent by the producer being nominated. The nomination shall be returned by the producer to the first purchaser of milk or to the department from whom the producer received notification within fifteen days after the receipt of the notification. For nominations to replace a member whose term is to expire or for a new member, the producers shall receive notification between August 1 and August 15 preceding the expiration of the term of the member or the beginning of the term of a new member. For all other vacancies, the producers shall receive notification within thirty days after the member vacates his or her position on the board or within thirty days after the board calls for an at-large member or members as provided in section 2-3951.02.

(3) The first purchasers of milk, the department, or the board shall submit nominations to the Governor by September 30, in the case of term expiration or new or at-large member, or forty-five days after the member vacates his or her position for all other vacancies. The Governor shall make the appointments within thirty days after receipt of the nominations.

(4) All nominees shall meet the qualifications provided in section 2-3951.

Source: Laws 2004, LB 836, § 6; Laws 2013, LB70, § 5.
Effective date March 21, 2013.

2-3962 Board; report; contents.

The board shall prepare a report on or before October 1 of each year setting forth the income received from the assessments collected in accordance with section 2-3958 for the preceding fiscal year, and the report shall include:

(1) The expenditure of funds by the board during the year for the administration of the Dairy Industry Development Act;

(2) A brief description of all contracts requiring the expenditure of funds by the board;

(3) The action taken by the board on all such contracts;

(4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

(5) The name and address of each member of the board; and

(6) A brief description of the rules, regulations, and orders adopted and promulgated by the board.

The board shall submit the report electronically to the Clerk of the Legislature and shall make the report available to the public upon request.

Source: Laws 1992, LB 275, § 15; Laws 2013, LB222, § 1.
Effective date May 8, 2013.

(d) NEBRASKA MILK ACT

2-3965 Act, how cited; provisions adopted by reference; copies.

(1) Sections 2-3965 to 2-3992 and the publications adopted by reference in subsections (2) and (3) of this section shall be known and may be cited as the Nebraska Milk Act.

(2) The Legislature adopts by reference the following official documents of the National Conference on Interstate Milk Shipments as published by the United States Department of Health and Human Services, United States Public Health Service/Food and Drug Administration:

(a) Grade A Pasteurized Milk Ordinance, 2011 Revision, as delineated in subsection (3) of this section;

(b) Methods of Making Sanitation Ratings of Milk Shippers, 2011 Revision;

(c) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2011 Revision; and

(d) Evaluation of Milk Laboratories, 2011 Revision.

(3) All provisions of the Grade A Pasteurized Milk Ordinance, 2011 Revision, including footnotes relating to requirements for cottage cheese, and the appendixes with which the ordinance requires mandatory compliance are adopted with the following exceptions:

(a) Section 9 of the ordinance is replaced by section 2-3969;

(b) Section 15 of the ordinance is replaced by section 2-3970;

(c) Section 16 of the ordinance is replaced by section 2-3974;

(d) Section 17 of the ordinance is not adopted;

(e) Section 3 of the ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) The department may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Milk Act; and

(ii) Decisions of the department may be appealed and such appeals shall be in accordance with the Administrative Procedure Act; and

(f) Section 1 of the ordinance, Definitions, is adopted except for paragraph W.

(4) Copies of the Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the

Legislature, and Department of Agriculture. The copies filed with the Clerk of the Legislature shall be filed electronically.

Source: Laws 1980, LB 632, § 1; Laws 1986, LB 900, § 1; Laws 1990, LB 856, § 2; Laws 1992, LB 366, § 2; Laws 1997, LB 201, § 1; Laws 2001, LB 198, § 1; R.S.Supp.,2006, § 2-3901; Laws 2007, LB111, § 1; Laws 2013, LB67, § 1; Laws 2013, LB222, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB67, section 1, with LB222, section 2, to reflect all amendments.

Note: Changes made by LB67 became effective March 8, 2013. Changes made by LB222 became effective May 8, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

2-3966 Terms, defined.

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

(1) 3-A Sanitary Standards means the standards for dairy equipment promulgated jointly by the Sanitary Standards Subcommittee of the Dairy Industry Committee, the Committee on Sanitary Procedure of the International Association for Food Protection, and the Milk Safety Team, Food and Drug Administration, Public Health Service, Center for Food Safety and Applied Nutrition, Department of Health and Human Services in effect on January 1, 2013;

(2) Acceptable milk means milk that qualifies under sections 2-3979 to 2-3982 as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk, ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk byproduct;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(6) Department means the Department of Agriculture;

(7) Director means the Director of Agriculture or his or her duly authorized agent or designee;

(8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(9) First purchaser means a person who purchases raw milk directly from the farm for processing or for resale to a processor, who purchases milk products or components of milk for processing or resale to a processor, or who utilizes milk from the first purchaser's own farm for the manufacturing of milk products or dairy products;

(10) Grade A Pasteurized Milk Ordinance means the documents delineated in subsection (3) of section 2-3965;

(11) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(12) Milk distributor means a person who distributes milk, fluid milk, milk products, or dairy products whether or not the milk is shipped within or into the state. The term does not include a milk plant, a bulk milk hauler/sampler, or a milk producer, as such terms are defined in the Grade A Pasteurized Milk Ordinance, or a food establishment, as defined in the Nebraska Pure Food Act;

(13) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

(14) Reject milk means milk that does not qualify under sections 2-3979 to 2-3982.

Source: Laws 1969, c. 5, § 3, p. 69; R.S.1943, (1976), § 81-263.89; Laws 1980, LB 632, § 14; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 12; Laws 1988, LB 871, § 19; Laws 1990, LB 856, § 6; Laws 1993, LB 121, § 77; Laws 1993, LB 268, § 1; Laws 2001, LB 198, § 7; R.S.Supp.,2006, § 2-3914; Laws 2007, LB111, § 2; Laws 2013, LB67, § 2.
Effective date March 8, 2013.

Cross References

Nebraska Pure Food Act, see section 81-2,239.

2-3971 Permit fees; inspection fees; other fees; rate.

(1)(a) As a condition precedent to the issuance of a permit pursuant to the Nebraska Milk Act, the annual permit fees shall be paid to the department on or before August 1 of each year as follows:

(i) Milk plant processing 100,000 or less pounds per month...$100.00;

(ii) Milk plant processing 100,001 to 2,000,000 pounds per month...$500.00;

(iii) Milk plant processing more than 2,000,000 pounds per month...$1,000.00;

(iv) Receiving station.....$200.00;

(v) Plant fabricating single-service articles..$300.00;

(vi) Milk distributor.....$150.00;

(vii) Transfer station.....$100.00;

(viii) Milk tank truck cleaning facility.....$100.00;

(ix) Bulk milk hauler/sampler.....$25.00;

(x) Field representative.....$25.00;

(xi) Grade A Milk producer.....No Fee; and

(xii) Manufacturing milk producer.....No Fee.

(b) On or before each August 1 a Milk Transportation Company shall pay twenty-five dollars for each milk tank truck in service on July 1 of the current year, but in no case shall the fee be less than one hundred dollars.

(2)(a) All milk or components of milk produced or processed in Nebraska and milk or components of milk shipped in for processing shall be subject to the payment of inspection fees as provided in this subsection.

(b) There shall be three categories of inspection fees as follows:

(i) The inspection fee for raw milk purchased directly off the farm by first purchasers shall have a maximum inspection fee of two and five-tenths cents per hundredweight for raw milk and shall be paid by first purchasers;

(ii) The inspection fee for milk processed by a milk plant shall be seventy-five percent of the fee paid by first purchasers and shall be paid by the milk plant; and

(iii) The inspection fee for components of milk processed shall be fifty percent of the fee paid by first purchasers and shall be paid by the milk plant.

(c) All fees shall be paid on or before the last day of the month for milk or components of milk produced or processed during the preceding month. Any unpaid fee shall be increased one and one-half percent each month beginning with the day following the date the fee was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid. The purpose of increasing the fees is to cover the administrative costs associated with collecting fees, and all money collected as increased fees shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund.

(d) The director may raise or lower the inspection fees each year, but the fees shall not exceed the maximum fees set out in subdivision (b) of this subsection. The director shall determine the fees based on the estimated annual revenue and fiscal year-end fund balance determined as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of the program cash fund appropriations allocated for the Nebraska Milk Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of the program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between categories to maintain the percentages set forth in subdivision (b) of this subsection.

(3) If any person required to have a permit pursuant to the act has been operating prior to applying for a permit, an additional fee of one hundred dollars shall be paid upon application.

Source: Laws 1980, LB 632, § 6; Laws 1986, LB 900, § 6; Laws 1992, LB 366, § 4; Laws 1997, LB 752, § 58; Laws 2001, LB 198, § 3; R.S.Supp.,2006, § 2-3906; Laws 2007, LB111, § 7; Laws 2013, LB67, § 3.
Effective date March 8, 2013.

2-3975 Director; surveys of milksheds; make and publish results.

The director shall make and publish the results of periodic surveys of milksheds to determine the degree of compliance with the sanitary requirements for the production, processing, handling, distribution, sampling, and hauling of milk and milk products as provided in the Nebraska Milk Act. The director shall have the power to adopt and promulgate reasonable rules and regulations in accordance with the procedure defined in the Administrative Procedure Act for the interpretation and enforcement of this section. Such a survey or rating of a milkshed shall follow the procedures prescribed by the United States Department of Health and Human Services, United States Food

and Drug Administration, in its documents, as delineated in section 2-3965, entitled Methods of Making Sanitation Ratings of Milk Shippers and Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments.

Source: Laws 1980, LB 632, § 10; Laws 1986, LB 900, § 9; Laws 1990, LB 856, § 4; Laws 1995, LB 406, § 1; Laws 1997, LB 201, § 4; Laws 2001, LB 198, § 6; R.S.Supp.,2006, § 2-3910; Laws 2007, LB111, § 11; Laws 2013, LB67, § 4.
Effective date March 8, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

2-3976 Pure Milk Cash Fund; created; use; investment.

All fees paid to the department in accordance with the Nebraska Milk Act shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund, which fund is hereby created. All money credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1980, LB 632, § 11; Laws 1986, LB 900, § 10; Laws 1995, LB 7, § 23; R.S.1943, (1997), § 2-3911; Laws 2007, LB111, § 12; Laws 2013, LB67, § 5.
Effective date March 8, 2013.

Cross References

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

2-3977 Field representative; powers; field representative permit; applicant; qualifications.

(1) Milk plants or any entity purchasing raw milk from producers holding a permit under the Nebraska Milk Act may employ, contract with, or otherwise provide for the services of a competent and qualified field representative who may:

(a) Inform new producers about the requirements of dairy farm sanitation and assist dairy producers with milk quality problems;

(b) Collect and submit samples at the request of the department; and

(c) Advise the department of any circumstances that could be of public health significance.

(2) An applicant for a field representative permit shall be trained in the sanitation practices for the sampling, care of samples, and milk hauling requirements of the Nebraska Milk Act. Prior to obtaining a field representative permit, the applicant shall take and pass an examination approved by the department and shall pay the permit fee set forth in section 2-3971. The permit shall expire on July 31 of the year following issuance.

Source: Laws 2007, LB111, § 13; Laws 2013, LB67, § 6.
Effective date March 8, 2013.

2-3981 Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards.

(1) All dairy plants using milk for manufacturing purposes shall run the quality tests set out in this section in a state-certified laboratory and report the results to the department upon request. The test methods shall be those stated in laboratory procedures.

(2) Milk for manufacturing purposes shall be classified for bacterial content by the standard plate count or plate loop count. Bacterial count limits of individual producer milk shall not exceed five hundred thousand per milliliter.

(3) Bacterial counts for milk for manufacturing purposes shall be run at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Whenever any two out of four consecutive bacterial counts exceed five hundred thousand per milliliter, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in subsection (2) of this section. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive bacterial count, the producer's milk shall be rejected until subsequent testing indicates a bacterial count of five hundred thousand per milliliter or less.

(4) All standards and procedures of the Grade A Pasteurized Milk Ordinance relating to somatic cells shall apply to milk for manufacturing purposes.

(5) The industry shall test all producer's milk and bulk milk pickup tankers for drug residues in accordance with Appendix N, Drug Residue Testing and Farm Surveillance, of the Grade A Pasteurized Milk Ordinance.

Source: Laws 1980, LB 632, § 17; Laws 1986, LB 900, § 14; Laws 1988, LB 871, § 20; Laws 1993, LB 268, § 3; Laws 1997, LB 201, § 5; Laws 2001, LB 198, § 9; R.S.Supp.,2006, § 2-3917; Laws 2007, LB111, § 17; Laws 2013, LB67, § 7.
Effective date March 8, 2013.

2-3982 Classification for sediment content; sediment standards; determination; effect.

(1) Milk for manufacturing purposes shall be classified for sediment content, regardless of the results of the appearance and odor examination described in section 2-3980, according to sediment standards as follows:

(a) No. 1: Acceptable, not to exceed fifty-hundredths milligrams or its equivalent;

(b) No. 2: Acceptable, not to exceed one and fifty-hundredths milligrams or its equivalent;

(c) No. 3: Probational, not over ten days, not to exceed two and fifty-hundredths milligrams or its equivalent; and

(d) No. 4: Reject, over two and fifty-hundredths milligrams or its equivalent.

(2) Methods for determining the sediment content of the milk of individual producers shall be the methods described in 7 C.F.R. 58.134, as such section existed on July 1, 2011.

(3) Sediment testing shall be performed at least four times every six months at irregular intervals as designated by the director.

(4) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. A producer's milk that is classified as No. 3 may be accepted for a period not to exceed ten calendar days. If at the end of ten days the producer's milk does not meet acceptable sediment classification No. 1 or No. 2, it shall be rejected from the market. If the sediment disc is classified as No. 4, the milk shall be rejected and no further shipments accepted unless the milk meets the requirements of No. 3 or better.

Source: Laws 1986, LB 900, § 15; Laws 1993, LB 268, § 4; Laws 2001, LB 198, § 10; R.S.Supp.,2006, § 2-3917.01; Laws 2007, LB111, § 18; Laws 2013, LB67, § 8.
Effective date March 8, 2013.

2-3982.01 Grade A Pasteurized Milk Ordinance requirements; facility in existence prior to July 1, 2013; other facilities; requirements applicable.

A facility producing milk for manufacturing purposes in existence prior to July 1, 2013, which does not meet all of the requirements of the Grade A Pasteurized Milk Ordinance shall be acceptable for use only if it meets the requirements of sections 2-3983 to 2-3989. After July 1, 2013, all new facilities that produce milk and facilities that produce milk that are under new ownership shall be required to meet the requirements of the Grade A Pasteurized Milk Ordinance.

Source: Laws 2013, LB67, § 9.
Effective date March 8, 2013.

2-3986 Milk in farm bulk tanks; cooled; temperature.

Milk for manufacturing purposes in farm bulk tanks shall be cooled to forty degrees Fahrenheit or lower within two hours after milking and maintained at fifty degrees Fahrenheit or lower until transferred to the transport tank. Milk offered for sale for manufacturing purposes shall be in a farm bulk tank that meets all 3-A Sanitary Standards.

Source: Laws 1969, c. 5, § 12, p. 75; R.S.1943, (1976), § 81-263.98; Laws 1980, LB 632, § 22; Laws 1986, LB 900, § 18; Laws 1993, LB 268, § 8; R.S.1943, (1997), § 2-3922; Laws 2007, LB111, § 22; Laws 2013, LB67, § 10.
Effective date March 8, 2013.

2-3988 Milk utensils; sanitation requirements.

At a facility producing milk for manufacturing purposes, utensils, milk cans, milking machines, including pipeline systems, and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. New or replacement can lids shall be umbrella type. All new utensils, new farm bulk tanks, and equipment shall meet 3-A Sanitary Standards and comply with applicable rules and regulations of the department. Equipment manufactured in conformity with 3-A Sanitary Stan-

dards complies with the sanitary design and construction standards of the Nebraska Milk Act.

Source: Laws 1969, c. 5, § 14, p. 76; R.S.1943, (1976), § 81-263.100; Laws 1980, LB 632, § 24; Laws 1986, LB 900, § 20; Laws 1993, LB 268, § 10; Laws 2001, LB 198, § 11; R.S.Supp.,2006, § 2-3924; Laws 2007, LB111, § 24; Laws 2013, LB67, § 11. Effective date March 8, 2013.

2-3989 Water supply requirements; testing.

The water supply at a facility producing milk for manufacturing purposes shall be safe, clean, and ample for the cleaning of dairy utensils and equipment. The water supply shall meet the bacteriological standards established by the Department of Health and Human Services at all times. Water samples shall be taken, analyzed, and found to be in compliance with the requirements of the Nebraska Milk Act prior to the issuance of a permit to the producer and whenever any major change to the well or water source occurs. Wells or water sources which do not meet the construction standards of the Department of Health and Human Services shall be tested annually, and wells or water sources which do meet the construction standards of the Department of Health and Human Services shall be tested every three years. Whenever major alterations or repairs occur or a well or water source repeatedly recontaminates, the water supply shall be unacceptable until such time as the construction standards are met and an acceptable supply is demonstrated. All new producers issued permits under the Nebraska Milk Act shall be required to meet the construction standards established by the Department of Health and Human Services for private water supplies.

Source: Laws 1969, c. 5, § 15, p. 76; R.S.1943, (1976), § 81-263.101; Laws 1980, LB 632, § 25; Laws 1986, LB 900, § 21; Laws 1989, LB 38, § 5; Laws 1993, LB 268, § 11; Laws 1996, LB 1044, § 40; R.S.1943, (1997), § 2-3925; Laws 2007, LB111, § 25; Laws 2007, LB296, § 19; Laws 2013, LB67, § 12. Effective date March 8, 2013.

ARTICLE 49

CLIMATE ASSESSMENT

Section
2-4902. Climate Assessment Response Committee; duties.

2-4902 Climate Assessment Response Committee; duties.

The Climate Assessment Response Committee shall:

(1) Provide timely and systematic data collection, analysis, and dissemination of information about drought and other severe climate occurrences to the Governor and to other interested persons;

(2) Provide the Governor and other interested persons with information and advice relevant to requests for federal disaster declarations and to the use of funds and other types of assistance available to the state because of such declarations;

(3) Establish criteria for startup and shutdown of various assessment and response activities by state and federal agencies during drought and other climate-related emergencies;

(4) Provide an organizational structure that assures information flow and defines the duties and responsibilities of all agencies during times of drought and climate-related emergencies;

(5) Maintain a current inventory of state and federal agency responsibilities in assessing and responding to drought and other climate-related emergencies;

(6) Provide a mechanism for the improvement of methods of assessing impacts of drought on agriculture and industry;

(7) Provide such other coordination and communication among federal and state agencies as is deemed appropriate by such committee;

(8) Provide the Governor and other interested persons with information and research on the impacts of cyclical climate change in Nebraska, including impacts on physical, ecological, and economic areas, and attempt to anticipate the unintended consequences of climate adaptation and mitigation;

(9) Facilitate communication between stakeholders and the state about cyclical climate change impacts and response strategies;

(10)(a) By September 1, 2014, prepare an initial report on cyclical climate change in Nebraska which includes a synthesis and assessment of the state of knowledge on: Historical climate variability and change; climate projections; and possible impacts to key sectors of the state such as agriculture, water, wildlife, ecosystems, forests, and outdoor recreation. The report shall include key points and a summary of the findings; and

(b) By December 1, 2014, review such initial report and provide a final report to the Governor and electronically to the Legislature which includes key points, overarching recommendations, and options that emerge from the initial report; and

(11) Perform such other climate-related assessment and response functions as are desired by the Governor.

Source: Laws 1992, LB 274, § 2; Laws 2013, LB583, § 1.
Effective date September 6, 2013.

CHAPTER 3
AERONAUTICS

Article.
3. Airport Zoning. 3-301 to 3-333.
5. City Airport Authority. 3-502.
8. Nebraska State Airline Authority. Repealed.

ARTICLE 3
AIRPORT ZONING

Section
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3-301 Terms, defined.

For purposes of the Airport Zoning Act, unless the context otherwise requires:

(1)(a) Airport means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft and includes any related buildings and facilities.

(b) Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans;

(2) Airport hazard means any structure or tree or use of land that penetrates any approach, operation, transition, or turning zone;

(3) Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in the act, but such area shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition, and turning zones;

(4) Airport layout plan means a scaled drawing of existing and proposed land, buildings, and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines;

(5) Approach zone means a zone that extends from the end of each operation zone and is centered along the extended runway centerlines. Approach zone dimensions are as follows:

(a) For an existing or proposed instrument runway:

(i) An approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is one thousand feet wide at the end of the zone nearest the runway and expands uniformly to sixteen thousand eight hundred forty feet wide at the farthest end of the zone; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every fifty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end. At three miles from such operation zone, the height limit resumes sloping one foot vertically for every fifty feet horizontally and continues to the ten-mile limit; and

(b) For an existing or proposed visual runway:

(i) An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is five hundred feet wide at the end of the zone nearest the runway and expands uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is three thousand seven hundred feet wide; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every forty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end;

(6) Electric facility means an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in section 70-1001.01, for the transmission or distribution of electrical power to the electric supplier's customers;

(7) Existing runway means an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction;

(8) Instrument runway means an existing runway with precision or nonprecision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or nonprecision instrument approaches reflected on the airport layout plan. After September 6, 2013, an airport shall not designate an existing or proposed runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after a public hearing on such designation;

(9) Operation zone means a zone that is longitudinally centered on each existing or proposed runway. Operation zone dimensions are as follows:

(a) For existing and proposed paved runways, the operation zone extends two hundred feet beyond the ends of each runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends;

(b) For existing and proposed instrument runways, the operation zone is one thousand feet wide, with five hundred feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is five hundred feet wide, with two hundred fifty feet on either side of the runway centerline; and

(c) The height limit of the operation zone is the same as the height of the runway centerline elevation on an existing or proposed runway or the surface of the ground, whichever is higher;

(10) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(11) Political subdivision means any municipality, city, village, or county;

(12) Proposed runway means an instrument runway or a visual runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration;

(13) Runway means a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length;

(14) Structure means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines;

(15) Transition zone means a zone that extends outward at a right angle to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally. The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty feet above the highest elevation on the existing or proposed runway;

(16) Tree means any object of natural growth;

(17) Turning zone's outer limit means the area located at a distance of three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway; and

(18) Visual runway means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service-approved military layout plan, or any planning documents submitted to the Federal Aviation Administration by a competent authority.

Source: Laws 1945, c. 233, § 1, p. 682; Laws 1993, LB 121, § 84; Laws 2013, LB140, § 1.
Effective date September 6, 2013.

3-302 Airport hazard; public nuisance; prevention.

(1) It is hereby found that an airport hazard endangers the lives and property of the users of an airport and occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.

(2) Accordingly, it is hereby declared that (a) the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question, (b) it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented, and (c) the prevention of airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

(3) It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

Source: Laws 1945, c. 233, § 2, p. 683; Laws 2013, LB140, § 2.
Effective date September 6, 2013.

3-303 Airport hazard; zoning regulations; modifications and exceptions.

In order to prevent the creation or establishment of airport hazards, every political subdivision that has an airport hazard area within the area of its zoning jurisdiction shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in the Airport Zoning Act, airport zoning regulations for such airport hazard area. The regulations shall meet the minimum regulations as prescribed by the Department of Aeronautics and may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected and trees allowed to grow, except that a political subdivision or a joint airport zoning board provided for in section 3-304 may include modifications or exceptions to the airport zoning regulations adopted under the Airport Zoning Act that the political subdivision or joint airport zoning board deems appropriate. Such modifications and exceptions shall not be considered a conflict for the purposes of section 3-306. The authority of a political subdivision to adopt airport zoning regulations shall not be conditional

upon prior adoption of a comprehensive development plan or a comprehensive zoning ordinance.

Source: Laws 1945, c. 233, § 3(1), p. 683; Laws 1961, c. 9, § 1, p. 96; Laws 2010, LB512, § 1; Laws 2013, LB140, § 3.
Effective date September 6, 2013.

3-304 Joint airport zoning board; airport zoning regulation; filing.

If an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside of the political subdivision's zoning jurisdiction, the political subdivision owning or controlling the airport and the political subdivision or political subdivisions within whose zoning jurisdiction the airport hazard area or areas are located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, by resolution approved by a majority of the board, airport zoning regulations applicable to an airport hazard area as that vested by section 3-303 in any political subdivision within whose zoning jurisdiction such area is located. Any airport zoning regulation, or any amendment thereto, adopted by a joint airport zoning board shall be filed with the official or administrative agency responsible for the enforcement of zoning regulations in each of the political subdivisions participating in the creation of the joint airport zoning board and shall be enforced as provided in section 3-319.

Source: Laws 1945, c. 233, § 3(2), p. 683; Laws 1961, c. 9, § 2, p. 96; Laws 1984, LB 837, § 1; Laws 2010, LB512, § 2; Laws 2013, LB140, § 4.
Effective date September 6, 2013.

3-304.01 Joint airport zoning board; members; term.

If a joint airport zoning board is created pursuant to section 3-304, such board shall have two representatives appointed by each political subdivision participating in its creation as members thereof and also a chairperson elected by a majority of the members so appointed. The term of each member shall be four years.

Source: Laws 2013, LB140, § 5.
Effective date September 6, 2013.

3-306 Zoning regulations; conflict; stringent limitation or requirement prevails.

In the event of any conflict between any airport zoning regulations adopted under the Airport Zoning Act and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Source: Laws 1945, c. 233, § 4(2), p. 684; Laws 2013, LB140, § 6.
Effective date September 6, 2013.

3-307 Zoning regulations; adoption; notice; hearing.

No airport zoning regulations shall be adopted, amended, or changed under the Airport Zoning Act except by the action of the legislative body of the political subdivision in question, or the joint airport zoning board provided for in section 3-304, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ten days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport hazard area is located.

Source: Laws 1945, c. 233, § 5(1), p. 684; Laws 2013, LB140, § 7.
Effective date September 6, 2013.

3-308 Zoning regulations; procedure for adoption; commission; appointment; preliminary report; public hearings; final report.

Prior to the initial zoning of any airport hazard area under the Airport Zoning Act, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. If a city or county planning commission or a joint or interjurisdictional planning commission already exists, it may be appointed as the airport zoning commission.

Source: Laws 1945, c. 233, § 5(2), p. 685; Laws 2013, LB140, § 8.
Effective date September 6, 2013.

3-309 Zoning regulations; requirements; reasonable.

All airport zoning regulations adopted under the Airport Zoning Act shall be reasonable and not impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of the act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable. If an airport layout plan has been submitted for approval to the Federal Aviation Administration with a proposed instrument runway depicted thereon and such airport layout plan is conditionally or unconditionally approved without such proposed instrument runway, the political subdivision shall adopt or revise, as necessary, airport zoning regulations to protect any approach zone for a visual runway only.

Source: Laws 1945, c. 233, § 6(1), p. 685; Laws 2013, LB140, § 9.
Effective date September 6, 2013.

3-310 Zoning regulations; nonconforming use; exception.

(1) No airport zoning regulations adopted under the Airport Zoning Act shall require the removal, lowering, or other change or alteration of any existing structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in section 3-311.

(2) Any structure that has not yet been constructed but that has received, prior to August 1, 2013, zoning approval from the political subdivision exercising zoning jurisdiction over such structure may be constructed and shall thereafter be considered an existing structure for purposes of this section.

Source: Laws 1945, c. 233, § 6(2), p. 685; Laws 2013, LB140, § 10. Effective date September 6, 2013.

3-311 Zoning regulations; new or changed structure; nonconforming use; permit.

(1) Airport zoning regulations adopted under the Airport Zoning Act may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed, altered, or repaired.

(2) Except as provided in subsection (3) of this section for certain electric facilities, all airport zoning regulations adopted under the act shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the administrative agency authorized to administer and enforce the regulations. A permit shall be granted under this subsection if the applicant shows that the replacement, alteration, repair, reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use would not result in an increase in height or a greater hazard to air navigation than the condition that existed when the applicable regulation was adopted. For nonconforming structures other than electric facilities, no permit under this subsection shall be required for repairs necessitated by fire, explosion, act of God, or the common enemy or for repairs which do not involve expenditures exceeding more than sixty percent of the fair market value of the nonconforming structure, so long as the height of the nonconforming structure is not increased over its preexisting height.

(3) An electric supplier owning or operating an electric facility made nonconforming by the adoption of airport zoning regulations under the Airport Zoning Act may, without a permit or other approval by the political subdivision adopting such regulations, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its preexisting height. Any construction, repair, reconstruction, or replacement of an electric facility, the height of which will exceed the preexisting height of such electric facility, shall require a permit from the political subdivision adopting such regulations. The permit shall be granted only upon a showing that the excess height of the electric facility will not establish or create an airport hazard or become a greater hazard to air navigation than the electric facility that previously existed.

Source: Laws 1945, c. 233, § 7(1), p. 685; Laws 2013, LB140, § 11. Effective date September 6, 2013.

3-312 Zoning regulations; property inconsistent with regulations; variance; allowance; exception.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in a manner inconsistent with the airport zoning regulations adopted under the Airport Zoning Act may apply to the board of adjustment for a variance from

the zoning regulations in question. Such variances shall be allowed only if the board of adjustment makes the same findings for the granting of variances generally as set forth in subsection (2) of section 19-910, except that if the applicant demonstrates that the proposed structure or alteration of a structure does not require any modification or revision to any approach or approach procedure as approved or written by the Federal Aviation Administration on either an existing or proposed runway and the applicant provides signed documentation from the Federal Aviation Administration that the proposed structure or alteration of the structure will not require any modification or revision of any airport minimums, such documentation may constitute evidence of undue hardship and the board of adjustment may grant the requested variance without such findings. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of the act.

Source: Laws 1945, c. 233, § 7(2), p. 686; Laws 2013, LB140, § 12. Effective date September 6, 2013.

3-313 Zoning regulations; permit or variance; hazard marking and lighting.

In granting any permit under or variance from any airport zoning regulation adopted under the Airport Zoning Act, the administrative agency or board of adjustment may, if it deems it advisable to effectuate the purposes of the act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Source: Laws 1945, c. 233, § 7(3), p. 686; Laws 2013, LB140, § 13. Effective date September 6, 2013.

3-314 Transferred to section 3-319.01.

3-315 Repealed. Laws 2013, LB 140, § 23.

3-316 Repealed. Laws 2013, LB 140, § 23.

3-317 Repealed. Laws 2013, LB 140, § 23.

3-318 Repealed. Laws 2013, LB 140, § 23.

3-319 Zoning regulations; provide for administration and enforcement.

All airport zoning regulations adopted under the Airport Zoning Act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations. In the case of airport zoning regulations adopted by a joint airport zoning board, each of the political subdivisions which participated in the creation of the joint airport zoning board shall create or designate an official or an administrative agency to administer and enforce the airport zoning regulations within its respective zoning jurisdiction. The duties of any official or administrative agency designated pursuant to the act shall include that of reviewing and acting upon all applications for permits under the airport zoning regulations, but such agency shall not have or exercise any of the

powers herein delegated to the board of adjustment. In no event shall such official or administrative agency be or include any member of the board of adjustment.

Source: Laws 1945, c. 233, § 9, p. 687; Laws 2013, LB140, § 14.
Effective date September 6, 2013.

3-319.01 Zoning regulations; appeal; hearing; procedure; board; duties.

(1) Any person aggrieved or taxpayer affected by any decision of an administrative agency made in its administration of airport zoning regulations adopted under the Airport Zoning Act, or any governing body of a political subdivision which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) Any appeal taken under this section shall be taken within a reasonable amount of time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay any proceeding in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases the proceedings shall not be stayed except by an order of the board after notice to the agency from which the appeal is taken and upon due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice thereof, give due notice to the parties in interest, and decide the appeal within sixty days after the date of filing such appeal. Any party may appear in person or by an agent or attorney at the hearing.

Source: Laws 1945, c. 233, § 8(1), p. 686; R.S.1943, (2012), § 3-314; Laws 2013, LB140, § 15.
Effective date September 6, 2013.

3-320 Zoning regulations; board of adjustment; members; terms; powers.

(1) All airport zoning regulations adopted under the Airport Zoning Act shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations;

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations; and

(c) To hear and decide petitions for variances from the strict application of airport zoning regulations.

(2) A board of adjustment shall consist of five regular members, each to be appointed for a term of three years by the political subdivision or joint airport zoning board adopting the regulations. Any member thereof may be removed by

the appointing authority for cause, upon written charges and after a public hearing. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of the administrative agency or to decide in favor of the applicant on any matter upon which the board is required to pass under the airport zoning regulations or to effect any variation in such regulations.

(3) The board of adjustment may, consistent with the Airport Zoning Act, reverse or affirm wholly or partly or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as it deems right and proper under the circumstances.

(4) A board of adjustment, board of zoning appeals, or similar zoning appeals board that exists on September 6, 2013, may be designated as and shall exercise the power of the board of adjustment for airport zoning regulations as required by this section.

Source: Laws 1945, c. 233, § 10(1), p. 688; Laws 2013, LB140, § 16. Effective date September 6, 2013.

3-321 Repealed. Laws 2013, LB 140, § 23.

3-322 Repealed. Laws 2013, LB 140, § 23.

3-324 Board of adjustment; judicial review; petition; grounds.

Any (1) person aggrieved or taxpayer affected by any decision of a board of adjustment, (2) governing body of a political subdivision, or (3) joint airport zoning board, which is of the opinion that a decision of a board of adjustment is arbitrary or capricious, illegal, or unsupported by evidence, may obtain judicial review of such decision by filing a petition in error in the district court of the county in which the structure or tree that is the subject of the decision is located. The filing of and proceeding on the petition in error shall be in accordance with sections 25-1901 to 25-1937.

Source: Laws 1945, c. 233, § 11(1), p. 689; Laws 2013, LB140, § 17. Effective date September 6, 2013.

3-325 Repealed. Laws 2013, LB 140, § 23.

3-326 Repealed. Laws 2013, LB 140, § 23.

3-327 Repealed. Laws 2013, LB 140, § 23.

3-329 Judicial review; effect of decision on other structures.

In any case in which airport zoning regulations adopted under the Airport Zoning Act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the Constitution of Nebraska or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Source: Laws 1945, c. 233, § 11(6), p. 690; Laws 2013, LB140, § 18. Effective date September 6, 2013.

3-330 Violation; penalty; injunctions.

Each violation of the Airport Zoning Act or of any regulations, orders, or rulings promulgated or made pursuant to the act shall constitute a Class IV misdemeanor. Each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under the act may institute, in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of (1) the act, (2) airport zoning regulations adopted under the act, or (3) any order or ruling made in connection with the administration or enforcement of the act or such regulations. The court in such proceedings shall adjudge to the plaintiff such relief by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of the act and of the regulations adopted and orders and rulings made pursuant thereto.

Source: Laws 1945, c. 233, § 12, p. 690; Laws 1977, LB 40, § 30; Laws 2013, LB140, § 19.
Effective date September 6, 2013.

3-331 Acquisition of property interest; purchase; grant; condemnation; procedure.

In any case in which (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use, (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under the Airport Zoning Act, or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning or operating the airport or served by it may acquire by purchase, grant, or condemnation, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of the act. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1945, c. 233, § 13, p. 691; Laws 1951, c. 101, § 30, p. 460; Laws 2013, LB140, § 20.
Effective date September 6, 2013.

3-333 Act, how cited.

Sections 3-301 to 3-333 shall be known and may be cited as the Airport Zoning Act.

Source: Laws 1945, c. 233, § 15, p. 691; Laws 2013, LB140, § 21.
Effective date September 6, 2013.

ARTICLE 5

CITY AIRPORT AUTHORITY

Section
3-502. Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.

3-502 Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.

(1) Any city may create an airport authority to be managed and controlled by a board. The board, when and if appointed, shall have full and exclusive jurisdiction and control over all facilities owned or thereafter acquired by such city for the purpose of aviation operation, air navigation, and air safety operation.

(2) The Cities Airport Authorities Act shall not become operative as to any city unless the mayor and city council in their discretion activate the airport authority by the mayor appointing and the council approving the board members as provided in this section. Each such board shall be a body corporate and politic, constituting a public corporation and an agency of the city for which such board is established.

(3) Each board in cities of the primary, first, and second classes and in villages shall consist of five members to be appointed by the mayor with the approval of the city council to serve until their successors elected pursuant to section 32-547 take office. Members of such board shall be residents of the city for which such authority is created. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, to serve the unexpired portion of the term. A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for the removal of such officer may be brought, upon resolution of the city council, in the district court of the county in which such city is located.

(4) Each board in cities of the metropolitan class shall consist of five members who shall be nominated by the mayor and approved by the city council and shall serve for terms of five years. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, and such appointee shall serve the unexpired portion of the term of the member whose office was vacated. Any member of such board may be removed from office by the mayor, for incompetence, neglect of duty, or malfeasance in office, with the consent and approval of the city council.

(5) The members of the board hereby created shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by the Cities Airport Authorities Act, to be paid as provided in section 23-1112 for county officers and employees. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of the members, or to its officers, agents, and employees, such powers and duties as it may deem proper.

(6) The board and its corporate existence shall continue only for a period of twenty years from the date of appointment of the members thereof and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged. When all liabilities incurred by the authority of every kind and character have been met and all its bonds have been paid in full or such liabilities and bonds have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the city. The authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities. Upon the authority's ceasing to exist, all its remaining rights and properties shall pass to and vest in the city.

Source: Laws 1957, c. 9, § 2, p. 111; Laws 1959, c. 12, § 1, p. 120; Laws 1965, c. 19, § 1, p. 153; Laws 1967, c. 14, § 1, p. 102; Laws

1967, c. 15, § 1, p. 106; Laws 1969, c. 25, § 1, p. 218; Laws 1971, LB 164, § 1; Laws 1972, LB 661, § 1; Laws 1977, LB 201, § 1; Laws 1981, LB 204, § 13; Laws 1988, LB 975, § 1; Laws 1994, LB 76, § 461; Laws 2013, LB87, § 1.
Effective date September 6, 2013.

ARTICLE 8

NEBRASKA STATE AIRLINE AUTHORITY

Section

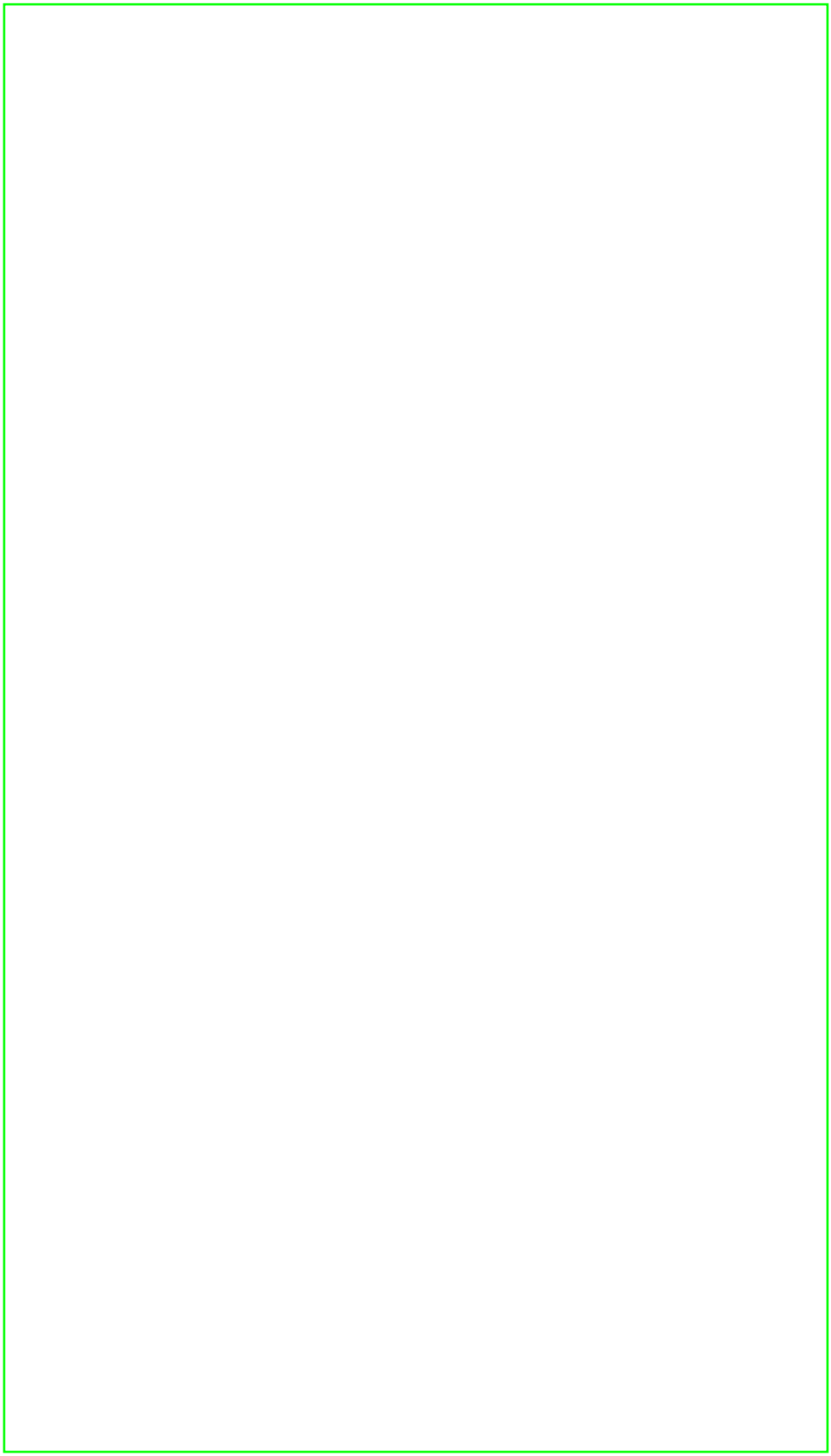
3-801 Repealed. Laws 2013, LB 78, § 23.

3-802 Repealed. Laws 2013, LB 78, § 23.

3-803 Repealed. Laws 2013, LB 78, § 23.

3-804 Repealed. Laws 2013, LB 78, § 23.

3-805 Repealed. Laws 2013, LB 78, § 23.



CHAPTER 8
BANKS AND BANKING

Article.
1. General Provisions. 8-103 to 8-1,140.
2. Trust Companies. 8-204, 8-213.
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ARTICLE 1
GENERAL PROVISIONS

Section
8-103. Director of Banking and Finance; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.
8-108. Director of Banking and Finance; financial institution examination; powers; procedure; charge.
8-135. Deposits; withdrawal methods authorized; section; how construed.
8-157.01. Financial institution; electronic terminals; use; user financial institution.
8-167.01. Banks; publication requirements not applicable; when.
8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-103 Director of Banking and Finance; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.

(1) The director shall have charge of and full supervision over the examination of banks and the enforcement of compliance with the statutes by banks and their holding companies in their business and functions and shall constructively aid and assist banks in maintaining proper banking standards and efficiency. The director shall also have charge of and full supervision over the examination of and the enforcement of compliance with the statutes by trust companies, building and loan associations, and credit unions in their business and functions and shall constructively aid and assist trust companies, building and loan associations, and credit unions in maintaining proper standards and efficiency.

(2) If the director is financially interested directly or indirectly in any financial institution doing business in Nebraska, subject to his or her jurisdiction, the financial institution shall be under the direct supervision of the Governor, and as to such financial institution, the Governor shall exercise all the supervisory powers otherwise vested in the Director of Banking and Finance by the laws of this state, and reports of examination by state bank examiners, foreign state bank examiners, examiners of the Federal Reserve Board, examiners of the Office of the Comptroller of the Currency, examiners

of the Federal Deposit Insurance Corporation, and examiners of the Consumer Financial Protection Bureau shall be transmitted to the Governor.

(3)(a) No person employed by the department shall be permitted to borrow money from any financial institution doing business in Nebraska subject to the jurisdiction of the department, except that persons employed by the department may borrow money in the normal course of business from the Nebraska State Employees Credit Union. If the credit union is acquired by, or merged into, a Nebraska state-chartered credit union, persons employed by the department may borrow money in the normal course of business from the successor credit union.

(b) In the event a loan to a person employed by the department is sold or otherwise transferred to a financial institution doing business in Nebraska and subject to the jurisdiction of the department, no violation of this section occurs if (i) the person employed by the department did not solicit the sale or transfer of the loan and (ii) the person employed by the department gives notice to the director of such sale or transfer. The director, in his or her discretion, may require such person to make all reasonable efforts to seek another lender.

(4) Any person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

Source: Laws 1933, c. 18, § 2, p. 135; C.S.Supp.,1941, § 8-1,123; R.S. 1943, § 8-102; Laws 1963, c. 29, § 3, p. 135; Laws 1967, c. 20, § 1, p. 122; Laws 1985, LB 653, § 1; Laws 1988, LB 375, § 2; Laws 1996, LB 1053, § 1; Laws 2002, LB 1094, § 2; Laws 2003, LB 131, § 3; Laws 2013, LB213, § 1.
Effective date March 8, 2013.

8-108 Director of Banking and Finance; financial institution examination; powers; procedure; charge.

(1) The director, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, papers, and affairs of any bank or other institution in Nebraska subject to the department's jurisdiction, or its holding company, if any, and in so doing to administer oaths and affirmations, to examine on oath or affirmation the officers, agents, and clerks of such institution or its holding company, if any, touching the matter which they may be authorized and directed to inquire into and examine, and to subpoena the attendance of any person or persons in this state to testify under oath or affirmation in relation to the affairs of such institution or its holding company, if any. Such powers shall include, but not be limited to, the authority to examine and monitor by electronic means the books, papers, and affairs of any financial institution or the holding company of a financial institution. The examination may be in the presence of at least two members of the board of directors of the institution or its holding company, if any, undergoing such examination, and it shall be the duty of the examiner to incorporate in his or her report the names of the directors in whose presence the examination was made.

(2) The director may accept any examination or report from the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency.

(3) The director may provide any such examination or report to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency. The department shall have power to examine the books, papers, and affairs of any electronic data processing center which has contracted with a financial institution to conduct the financial institution's electronic data processing business. The department may charge the electronic data processing center for the time spent by examiners in such examination at the rate set forth in section 8-606 for examiners' time spent in examinations of financial institutions.

Source: Laws 1909, c. 10, § 8, p. 69; R.S.1913, § 287; Laws 1919, c. 190, tit. V, art. XVI, § 6, p. 687; C.S.1922, § 7987; Laws 1923, c. 191, § 8, p. 441; C.S.1929, § 8-118; Laws 1933, c. 18, § 13, p. 142; C.S.Supp.,1941, § 8-118; R.S.1943, § 8-115; Laws 1963, c. 29, § 8, p. 137; Laws 1985, LB 653, § 2; Laws 1988, LB 375, § 3; Laws 1992, LB 757, § 2; Laws 2007, LB124, § 1; Laws 2013, LB213, § 2.
Effective date March 8, 2013.

8-135 Deposits; withdrawal methods authorized; section; how construed.

(1) All persons, regardless of age, may become depositors in any bank and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(a) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments so made; or

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

(vi) Any electronic terminal, computer, magnetic tape, or other electronic means.

(2) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as the act existed on January 1, 2013, and shall not affect the legal relationships between a minor and any person other than the bank.

Source: Laws 1963, c. 27, § 1, p. 132; Laws 1963, c. 29, § 35, p. 148; Laws 2005, LB 533, § 6; Laws 2013, LB213, § 3.
Effective date March 8, 2013.

8-157.01 Financial institution; electronic terminals; use; user financial institution.

(1) Any financial institution which has a main chartered office or approved branch located in the State of Nebraska may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, and account balance inquiry, may be conducted. Any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public may be conducted at an automatic teller machine upon thirty days' prior written notice to the director if the director does not object to the proposed other transaction within the thirty-day notice period. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Such automatic teller machines shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. It shall not be deemed discrimination if an automatic teller machine does not offer the same transaction services as other automatic teller machines or if there are no fees charged between affiliate financial institutions for the use of automatic teller machines.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution or its designated data processing center shall be responsible for transmitting transactions originating from its automatic teller machine to a switch, but nothing contained in this section shall be construed to require routing of all transactions to a switch. All automatic teller machines must be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided for switching transactions. The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that it is not available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the automatic teller machines, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank

employees may be trained in the use of the automatic teller machines by financial institution employees.

(3) An establishing financial institution shall not be deemed to make an automatic teller machine available on a nondiscriminating basis if, through personnel services offered, advertising on or off the automatic teller machine's premises, or otherwise, it discriminates in the use of the automatic teller machine against any user financial institution which has a main chartered office or approved branch located in the State of Nebraska.

(4) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2013. Such notice shall appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals. A point-of-sale terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. Nothing in this subsection shall prohibit payment of fees to a financial institution which issues an access device used to initiate electronic funds transfer transactions at a point-of-sale terminal.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises. The acquiring financial institution shall be responsible for compliance with all applicable standards, rules, and regulations governing point-of-sale transactions.

(7) Any financial institution, upon a request of the director, shall file with the director a current listing of all point-of-sale terminals established by the financial institution within this state. For purposes of this subsection, point-of-sale terminal shall include a group of one or more of such terminals established at a single business location. Such listing shall contain any reasonable descriptive information pertaining to the point-of-sale terminal as required by the director. Neither the establishment of such point-of-sale terminal nor any transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Following establishment of a point-of-sale terminal, the director, upon notice and after a hearing, may terminate or suspend the use of such point-of-sale terminal if he or she determines that it is not made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, that the necessary information is not on file with the director, or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing center. Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at the

point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8) Transactions at point-of-sale terminals may include:

(a) Check guarantees;

(b) Account balance inquiries;

(c) Transfers of funds from a customer's account for payment to a seller's account for goods and services on whose premises the point-of-sale terminal is located in payment for the goods and services;

(d) Cash withdrawals by a customer from the customer's account or accounts;

(e) Transfers between accounts of the same customers at the same financial institution; and

(f) Such other transactions as the director, upon application, notice, and hearing, may approve.

(9)(a) Automatic teller machines may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institution or financial institutions and a third party.

(b) Point-of-sale terminals may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institutions and a third party. No one, through personnel services offered, advertising on or off the point-of-sale terminal premises, or otherwise, may discriminate in the use of the point-of-sale terminal against any other user financial institution.

(10) All financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to January 1, 1993, shall be deemed to be approved for purposes of this section.

(11) Use of an automatic teller machine or a point-of-sale terminal through access to a switch and use of any switch shall be made available on a nondiscriminating basis to any financial institution. A financial institution shall only be permitted use of the switch if the financial institution conforms to reasonable technical operating standards which have been established by the switch.

(12) To assure maximum safety and security against malfunction, fraud, theft, and other accidents or abuses and to assure that all such access devices will have the capability of activating all automatic teller machines and point-of-sale terminals established in this state, no automatic teller machine or point-of-sale terminal shall accept an access device which does not conform to such specifications as are generally accepted. No automatic teller machine or point-

of-sale terminal shall be established or operated which does not accept an access device which conforms with such specifications.

An automatic teller machine shall bear a logo type or other identification symbol designed to advise customers that the automatic teller machine may be activated by any access device which complies with the generally accepted specifications. A point-of-sale terminal shall either bear or the premises on which the point-of-sale terminal is established shall contain a visible logo type or other identification symbol designed to advise customers that the point-of-sale terminal may be activated by any access device which complies with the generally accepted specifications. An automatic teller machine or point-of-sale terminal may also bear, at the option of the establishing or acquiring financial institution, any of the following:

(a) The names of all individual financial institutions using such automatic teller machines or point-of-sale terminals in alphabetical order, except that the establishing or acquiring financial institution may be listed first, and in a uniform typeface, size, and color; or

(b) The logo type or symbol of any association, corporation, or other entity or organization formed by one or more of the financial institutions using such automatic teller machines or point-of-sale terminals.

(13) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

(14) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days after the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,134 to 8-1,139 and to having the privileges granted in this section revoked.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(c) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(d) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(e) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(f) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(g) Establishing financial institution means any financial institution establishing an automatic teller machine which has a main chartered office or approved branch located in the State of Nebraska;

(h) Financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union, or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Personal identification number means a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(k) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer; and

(l) User financial institution means any financial institution which desires to avail itself of and provide its customers with automatic teller machine or point-of-sale terminal services.

(16) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(17) Nothing in this section requires any federally chartered establishing financial institution to obtain the approval of the director for the establishment of any automatic teller machine.

(18) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or foreign financial institutions or to allow customers of out-of-state financial institutions or foreign financial institutions to use its automatic teller machines located in the State of Nebraska. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program or usage fees charged for the use of its automatic teller machines by customers of out-of-state financial institutions or foreign financial institutions shall not be considered for purposes of determining if an automatic teller machine located in the State of Nebraska has been made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution.

(19) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account

from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4; Laws 2013, LB100, § 1.
Effective date February 16, 2013.

8-167.01 Banks; publication requirements not applicable; when.

The publication requirements of section 8-167 shall not apply to any bank that makes a disclosure statement available to any member of the general public upon request in compliance with the disclosure of financial information provisions of 12 C.F.R. part 350, as such part existed on January 1, 2013.

Source: Laws 1995, LB 384, § 18; Laws 2013, LB213, § 4.
Effective date March 8, 2013.

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

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2013, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6; Laws 2010, LB890, § 6; Laws 2011, LB74, § 1; Laws 2012, LB963, § 4; Laws 2013, LB213, § 5.
Effective date March 8, 2013.

ARTICLE 2
TRUST COMPANIES

Section
8-204. Directors; qualifications; duties; vacancies.
8-213. Pledged securities of insolvent trust companies or out-of-state entity acting in fiduciary capacity; transfer to fiduciary; conditions.

8-204 Directors; qualifications; duties; vacancies.

The control of the business affairs of a trust company shall be vested in a board of directors of not less than five persons who shall be selected at such time and in such manner as may be provided by the articles of incorporation of the trust company and in conformity with the Nebraska Trust Company Act.

Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy leaves a minimum of five directors, appointment shall be optional. The board shall select from among its number a president and secretary and shall appoint trust officers and committees as it deems necessary. The officers and committee members shall hold their positions at the discretion of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter and shall prepare and maintain complete and accurate minutes of the proceedings at such meetings.

The board of directors shall make or cause to be made each year a thorough examination of the books, records, funds, and securities held for the trust company and customer accounts. The examination may be conducted by the members of the board of directors or the board may accept an annual audit by an accountant or accounting firm approved by the Department of Banking and Finance. Any such examination or audit must comply in scope with minimum standards established by the department.

Unless the department otherwise approves, a majority of the members of the board of directors of any trust company shall be residents of this state. Reasonable efforts shall be made to acquire members of the board of directors from the county in which the trust company is located. Directors of trust companies shall be persons of good moral character and known integrity, business experience, and responsibility. No person shall act as such member of the board of directors of any trust company until the corporation applies for and obtains approval from the Department of Banking and Finance.

Source: Laws 1911, c. 31, § 4, p. 188; R.S.1913, § 741; Laws 1919, c. 190, tit. V, art. XVIII, § 4, p. 718; C.S.1922, § 8065; C.S.1929, § 8-203; R.S.1943, § 8-204; Laws 1993, LB 81, § 17; Laws 2013, LB213, § 6.
Effective date March 8, 2013.

8-213 Pledged securities of insolvent trust companies or out-of-state entity acting in fiduciary capacity; transfer to fiduciary; conditions.

In the case of national banks and federal savings associations doing business as trust companies, trust companies, federally chartered trust companies, out-of-state trust companies authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, and out-of-state entities acting in a fiduciary capacity in this state, which upon insolvency are not liquidated by the Department of Banking and Finance, upon the appointment of a receiver, trustee in bankruptcy, or other liquidating agent, the department shall turn over to the receiver, trustee in bankruptcy, or other liquidating agent any securities pledged to it by the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, upon:

(1) The entry of an order by a court having jurisdiction over a receiver, trustee in bankruptcy, or other liquidating agent of the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act

or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, ordering the department to turn over to a receiver, trustee in bankruptcy, or other liquidating agent the securities pledged to the department; and

(2) The publication of a notice for three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, is located that all claims for the trust liabilities must be filed with the receiver, trustee in bankruptcy, or other liquidating agent within thirty days. In the case of national banks the notice provided for in 12 U.S.C. 193, and in the case of trust companies liquidated in bankruptcy court, the notice provided for in 11 U.S.C. 342, shall be sufficient without further notice being given and shall be in lieu of the notice required in this subdivision. In the case of out-of-state trust companies authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or in the case of any out-of-state entity acting in a fiduciary capacity in this state, an additional notice shall be published in each county in Nebraska where the out-of-state trust company or out-of-state entity maintains an office, does business, or acts in a fiduciary capacity, or maintained an office, conducted business, or acted in a fiduciary capacity, within one year prior to the insolvency.

Source: Laws 1933, c. 20, § 1, p. 190; Laws 1939, c. 3, § 2, p. 60; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-213; Laws 1986, LB 960, § 2; Laws 1993, LB 81, § 27; Laws 1998, LB 1321, § 42; Laws 2005, LB 533, § 13; Laws 2012, LB963, § 7; Laws 2013, LB213, § 7.
Effective date March 8, 2013.

Cross References

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

ARTICLE 3
BUILDING AND LOAN ASSOCIATIONS

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

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

Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2013, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1;

Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws 1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws 1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7; Laws 2008, LB851, § 11; Laws 2009, LB327, § 9; Laws 2010, LB890, § 8; Laws 2011, LB74, § 2; Laws 2012, LB963, § 11; Laws 2013, LB213, § 8.
Effective date March 8, 2013.

ARTICLE 6
ASSESSMENTS AND FEES

Section

8-601 Director of Banking and Finance; employees; financial institutions; levy of assessment authorized.

The Director of Banking and Finance may employ deputies, examiners, attorneys, and other assistants as may be necessary for the administration of the provisions and purposes of the Nebraska Money Transmitters Act; Chapter 8, articles 1, 2, 3, 5, 6, 7, 8, 9, 13, 14, 15, 16, 19, 20, 21, 23, 24, and 25; Chapter 21, article 17; and Chapter 45, articles 1, 2, 3, 7, 9, and 10. The director may levy upon financial institutions, namely, the banks, trust companies, building and loan associations, savings and loan associations, savings banks, and credit unions, organized under the laws of this state, and holding companies, if any, of such financial institutions, an assessment each year based upon the asset size of the financial institution, except that in determining the asset size of a holding company, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded. The assessment shall be a sum determined by the director in accordance with section 8-606 and approved by the Governor.

Source: Laws 1937, c. 20, § 1, p. 128; C.S.Supp.,1941, § 8-701; R.S. 1943, § 8-601; Laws 1955, c. 15, § 1, p. 83; Laws 1973, LB 164, § 20; Laws 1976, LB 561, § 2; Laws 1980, LB 966, § 2; Laws 1986, LB 910, § 1; Laws 2002, LB 1094, § 6; Laws 2003, LB 131, § 7; Laws 2007, LB124, § 8; Laws 2013, LB616, § 49. Operative date January 1, 2014.

Cross References

Nebraska Money Transmitters Act, see section 8-2701.

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

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

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

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

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

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

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

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

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

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

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

(10) For the handling of pledged securities as provided in sections 8-210 and 8-2727 at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the entity pledging the securities;

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

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

(13) For investigating an application for approval to establish or acquire a branch pursuant to section 8-157 or 8-2103 or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

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

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

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

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

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

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

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

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

Source: Laws 1937, c. 20, § 2, p. 129; C.S.Supp.,1941, § 8-702; R.S. 1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB124, § 9; Laws 2009, LB327, § 10; Laws 2010, LB891, § 3; Laws 2011, LB74, § 3; Laws 2012, LB963, § 12; Laws 2013, LB616, § 50.
Operative date January 1, 2014.

ARTICLE 7

STATE-FEDERAL COOPERATION ACTS; CAPITAL NOTES

(a) FEDERAL BANKING ACT OF 1933

(a) FEDERAL BANKING ACT OF 1933

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

(1) Except as provided in subsection (2) of this section, any banking institution organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

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

(b) Any banking institution described in subdivision (a) of this subsection that employs mortgage loan originators, as defined in section 45-702, shall register such employees with the Nationwide Mortgage Licensing System and Registry, as defined in section 45-702, by furnishing the following information concerning the employees' identities to the Nationwide Mortgage Licensing System and Registry:

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

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

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

Source: Laws 1935, c. 8, § 2, p. 73; C.S.Supp.,1941, § 8-402; R.S.1943, § 8-702; Laws 1963, c. 31, § 2, p. 190; Laws 1983, LB 252, § 5; Laws 1984, LB 899, § 3; Laws 2005, LB 533, § 22; Laws 2009, LB328, § 2; Laws 2010, LB892, § 1; Laws 2011, LB75, § 1; Laws 2013, LB213, § 9.
Effective date March 8, 2013.

8-705 Examinations, reports of other examiners; Director of Banking and Finance may accept.

The Director of Banking and Finance is authorized to accept in his or her discretion, in lieu of any examination authorized by the laws of this state to be conducted by his or her department of a banking institution, the examination that may have been made of such banking institution within a reasonable period by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency if a copy of the examination is furnished to the director. The director may also in his or her discretion accept any report relative to the condition of a banking institution which may have been obtained by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency within a reasonable period in lieu of a report authorized by the laws of this state to be required of such institution by his or her department if a copy of such report is furnished to the director.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 5, p. 74; C.S.Supp.,1941, § 8-405; R.S.1943, § 8-705; Laws 1988, LB 375, § 4; Laws 2013, LB213, § 10.
Effective date March 8, 2013.

8-706 Examinations, reports of Director of Banking and Finance; may be furnished to other examiners.

The Director of Banking and Finance may furnish to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institution and of any or all reports made by it and shall give access and disclose to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency, or to any official or examiner thereof, any and all information possessed by the office of the director with reference to the conditions or affairs of any such insured institution. Nothing in this section shall be construed to limit the duty of any banking institution in this state, deposits in which are to any extent insured under the provisions of section 8 of the Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended), or of any amendment of or substitution for the same, to comply with the provisions of such act, its amendments or substitutions, or the requirements of the Federal Deposit Insurance Corporation relative to examinations and reports, nor to limit the powers of the director with reference to examinations and reports under existing law.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 6, p. 74; C.S.Supp.,1941, § 8-406; R.S.1943, § 8-706; Laws 1988, LB 375, § 5; Laws 2013, LB213, § 11. Effective date March 8, 2013.

ARTICLE 9

BANK HOLDING COMPANIES

Section
8-915. Examinations; costs; reports in lieu of examination; director; powers.

8-915 Examinations; costs; reports in lieu of examination; director; powers.

The director may make examinations of any bank holding company with one or more state-chartered bank subsidiaries and each state-chartered bank subsidiary thereof, the cost of which shall be assessed, in the manner set forth in sections 8-605 and 8-606, against and paid for by such bank holding company. The director may accept reports of examination made by the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, or a foreign state agency in lieu of making an examination by the department. The director may provide reports of examination conducted by the department or other confidential information to any of such regulatory entities. The director may contract with any of such regulatory entities to conduct and pay for such an examination for the department. The director may contract with any of such regulatory entities to conduct and receive payment for such an examination for any of such

regulatory entities. The director may enter into cooperative agreements with any or all of such regulatory entities to foster the purposes of the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 26; Laws 2007, LB124, § 15; Laws 2013, LB213, § 12.
Effective date March 8, 2013.

ARTICLE 10

NEBRASKA SALE OF CHECKS AND FUNDS TRANSMISSION ACT

Section
8-1001. Repealed. Laws 2013, LB 616, § 53.
8-1001.01. Repealed. Laws 2013, LB 616, § 53.
8-1002. Repealed. Laws 2013, LB 616, § 53.
8-1003. Repealed. Laws 2013, LB 616, § 53.
8-1004. Repealed. Laws 2013, LB 616, § 53.
8-1005. Repealed. Laws 2013, LB 616, § 53.
8-1006. Repealed. Laws 2013, LB 616, § 53.
8-1007. Repealed. Laws 2013, LB 616, § 53.
8-1008. Repealed. Laws 2013, LB 616, § 53.
8-1009. Repealed. Laws 2013, LB 616, § 53.
8-1010. Repealed. Laws 2013, LB 616, § 53.
8-1011. Repealed. Laws 2013, LB 616, § 53.
8-1012. Repealed. Laws 2013, LB 616, § 53.
8-1012.01. Repealed. Laws 2013, LB 616, § 53.
8-1013. Repealed. Laws 2013, LB 616, § 53.
8-1014. Repealed. Laws 2013, LB 616, § 53.
8-1016. Repealed. Laws 2013, LB 616, § 53.
8-1017. Repealed. Laws 2013, LB 616, § 53.
8-1018. Repealed. Laws 2013, LB 616, § 53.
8-1019. Repealed. Laws 2013, LB 616, § 53.

8-1001 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1001.01 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1002 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1003 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1004 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1005 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1006 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1007 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1008 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1009 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1010 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1011 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1012 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1012.01 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1013 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1014 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1016 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1017 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1018 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

8-1019 Repealed. Laws 2013, LB 616, § 53.

Operative date January 1, 2014.

ARTICLE 11
SECURITIES ACT OF NEBRASKA

Section

8-1101 Terms, defined.

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

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

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its

own security exempted by subdivision (5) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section;

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

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

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

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

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

residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser, or (i) such other persons not within the intent of this subdivision as the director may by rule, regulation, or order designate;

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

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

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

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

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

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

future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Investment Company Act of 1940, and Commodity Exchange Act means the federal statutes of those names as amended on or before January 1, 2013;

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

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

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

Source: Laws 1965, c. 549, § 1, p. 1763; Laws 1973, LB 167, § 1; Laws 1977, LB 263, § 1; Laws 1978, LB 760, § 1; Laws 1989, LB 60, § 1; Laws 1991, LB 305, § 2; Laws 1993, LB 216, § 1; Laws 1993, LB 121, § 96; Laws 1994, LB 884, § 10; Laws 1995, LB 119, § 1; Laws 1996, LB 1053, § 7; Laws 1997, LB 335, § 1; Laws 2001, LB 52, § 43; Laws 2001, LB 53, § 19; Laws 2011, LB76, § 1; Laws 2013, LB214, § 1.
Effective date September 6, 2013.

Cross References

Viatical Settlements Act, see section 44-1101.

8-1104 Registration of securities; exceptions.

It shall be unlawful for any person to offer or sell any security in this state unless (1) such security is registered by coordination under section 8-1106 or by qualification under section 8-1107, (2) the security is exempt under section 8-1110 or is sold in a transaction exempt under section 8-1111, or (3) the security is a federal covered security.

Source: Laws 1965, c. 549, § 4, p. 1773; Laws 1997, LB 335, § 3; Laws 2013, LB214, § 2.
Effective date September 6, 2013.

8-1105 Repealed. Laws 2013, LB 214, § 13.

8-1108 Registration of securities; requirements; fees; effective date; reports; director, powers.

(1) A registration statement may be filed by the issuer, by any other person on whose behalf the offering is to be made, or by a registered broker-dealer. Any document filed under the Securities Act of Nebraska or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The director may by rule and regulation or order permit the omission of any item of information or document from any registration statement.

(2) The director may require as a condition of registration by qualification (a) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, (b) that the applicant comply with the federal Securities Act of 1933 if it appears to the director to be in the public interest or that the registered security is or will be offered in such manner as to be subject to such act, (c) such reasonable conditions, restrictions, or limitations upon the offering as may be in the public interest, or (d) that any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash, be delivered in escrow to him or her or to some other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the director to have been actually earned on the investment in any common stock so held. The director shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(3) For the registration of securities by coordination or qualification, there shall be paid to the director a registration fee of one-tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the fee shall in no case be less than one hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 8-1109, the director shall retain one hundred dollars of the fee. Any issuer who sells securities in this state in excess

of the aggregate amount of securities registered may, at the discretion of the director and while such registration is still effective, apply to register the excess securities sold to persons within this state by paying a registration fee of three-tenths of one percent for the difference between the initial fee paid and the fee required in this subsection. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

(4) When securities are registered by coordination or qualification, they may be offered and sold by a registered broker-dealer. Every registration shall remain effective for one year or until sooner revoked by the director or sooner terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security shall be considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

(5) The director may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which are being offered and sold directly by or for the account of the issuer.

(6) A registration of securities shall be effective for a period of one year or such shorter period as the director may determine.

Source: Laws 1965, c. 549, § 8, p. 1781; Laws 1988, LB 1157, § 1; Laws 1991, LB 305, § 4; Laws 1997, LB 335, § 4; Laws 2013, LB214, § 3.
Effective date September 6, 2013.

8-1108.01 Securities; sale without registration; cease and desist order; fine; lien; hearing.

(1) Whenever it appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it appears to the director that any person is acting as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative without registration as such or acting as a federal covered adviser without making a notice filing under the act, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such or has made the required notice filing under the act.

(3) Whenever it appears to the director that any person is violating section 8-1102, he or she may order the person to cease and desist from such activity.

(4) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the act or any rule, regulation, or order issued under the act, except that the director shall not impose a fine upon any person in connection with a transaction made pursuant to subdivision (23) of section 8-1111 for any statement of a

material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead. The fine and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director and remitted to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(5) After such an order has been made under subsection (1), (2), (3), or (4) of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within thirty business days after receipt of the request, unless both parties consent to a later date or the hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

Source: Laws 1974, LB 721, § 5; Laws 1987, LB 650, § 1; Laws 1990, LB 956, § 8; Laws 1993, LB 216, § 5; Laws 1997, LB 335, § 5; Laws 2001, LB 53, § 21; Laws 2013, LB205, § 1.
Effective date September 6, 2013.

8-1108.02 Federal covered security; filing; director; powers; sales; requirements.

(1) The director, by rule and regulation or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a filing fee as prescribed by section 8-1108.03;

(b) After the initial offer of such federal covered security in this state, all documents which are part of any amendment to the federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(c) A sales report of the total amount of such federal covered securities offered or sold in this state, together with the filing fee prescribed by section 8-1108.03.

(2) With respect to any security that is a federal covered security under section 18(b)(4)(E) of the Securities Act of 1933, the director, by rule and regulation or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than fifteen days after the first sale of such federal covered security in this state, together with a filing fee of two hundred dollars.

(3) The director, by rule and regulation or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or (4), except section 18(b)(4)(E), of the Securities Act of 1933, together with a filing fee of two hundred dollars.

(4) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that (a) the order is in the public interest and (b) there is a failure to comply with any condition established under this section or with any other applicable provision of the Securities Act of Nebraska.

(5) The director, by rule and regulation or order, may waive any or all of the provisions of this section, except that the director does not have the authority to waive the payment of fees as required by this section.

(6) No person may bring an action pursuant to section 8-1118 based on the failure of an issuer to file any notice or pay any fee required by this section.

(7) All federal covered securities offered or sold in this state must be sold through a registered agent of a broker-dealer registered under the Securities Act of Nebraska or by persons duly exempted or excluded from such registration, except that this subsection shall not apply to the offer or sale of a federal covered security under section 18(b)(4)(E) of the Securities Act of 1933 if no commission or other remuneration is paid directly or indirectly for soliciting any prospective buyer.

Source: Laws 1997, LB 335, § 9; Laws 2013, LB214, § 4.
Effective date September 6, 2013.

8-1109 Registration of securities; denial, suspension, or revocation; grounds.

The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register securities by coordination if he or she finds that the order is in the public interest and that:

(1) Any such registration statement registering securities, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of the Securities Act of Nebraska or any rule, order, or condition lawfully imposed under the act has been violated, in connection with the offering by the person filing the registration statement, the issuer, any partner, limited liability company member, officer, or director of the issuer, any

person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer or any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering. The director may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on, and he or she may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless the injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (2)(g) of section 8-1106;

(5) The applicant or registrant has failed to pay the proper registration fee. The director may enter only a denial order under this subdivision and shall vacate any such order when the deficiency has been corrected. The director may not enter an order against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective;

(6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(7) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(8) All or substantially all the enterprise or business of the issuer, promoter, or guarantor has been found to be unlawful by a final order of a court or administrative agency of competent jurisdiction; or

(9) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director.

Source: Laws 1965, c. 549, § 9, p. 1783; Laws 1967, c. 29, § 2, p. 144; Laws 1973, LB 167, § 4; Laws 1977, LB 263, § 4; Laws 1987, LB 27, § 1; Laws 1993, LB 121, § 98; Laws 1994, LB 884, § 13; Laws 2013, LB214, § 5.
Effective date September 6, 2013.

8-1111 Transactions exempt from registration.

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

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check,

blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

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

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

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

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

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

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

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three

immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable;

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

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

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as the act existed on January 1, 2013;

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

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

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

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

first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (iv) no general or public advertisements or solicitations are made.

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

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

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

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

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

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

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

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and

containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

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

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

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

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no

later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is

effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

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

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

(ii) A consent to service of process; and

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

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

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

(23) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when:

(a) The proceeds from all sales of securities by the issuer in any two-year period do not exceed two hundred fifty thousand dollars and at least eighty percent of the proceeds are used in Nebraska;

(b) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(c) The issuer, any partner or limited liability company member of the issuer, any officer, director, or any person occupying a similar status of the issuer, any person performing similar functions for the issuer, or any person holding a direct or indirect ownership interest in the issuer or in any way a beneficial interest in such sale of securities of the issuer, has not been:

(i) Found by a final order of any state or federal administrative agency or a court of competent jurisdiction to have violated any provision of the Securities Act of Nebraska or a similar act of any other state or of the United States;

(ii) Convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit,

including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) Found by any state or federal administrative agency or court of competent jurisdiction to have engaged in fraud or deceit, including, but not limited to, making an untrue statement of a material fact or omitting to state a material fact; or

(iv) Temporarily or preliminarily restrained or enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the Securities and Exchange Commission;

(d)(i) At least fifteen business days prior to the offer or sale, the issuer files a notice with the director, which notice shall include:

(A) The name, address, telephone number, and email address of the issuer;

(B) The name and address of each person holding direct or indirect ownership or beneficial interest in the issuer;

(C) The amount of the offering; and

(D) The type of security being offered, the manner in which purchasers will be solicited, and a statement made upon oath or affirmation that the conditions of this exemption have been or will be met.

(ii) Failure to give such notice may be cured by an order issued by the director in his or her discretion;

(e) Prior to payment of consideration for the securities, the offeree receives a written disclosure statement containing (i) a description of the proposed use of the proceeds of the offering; (ii) the name of each partner or limited liability company member of the issuer, officer, director, or person occupying a similar status of the issuer or performing similar functions for the issuer; and (iii) the financial condition of the issuer;

(f) The purchaser signs a subscription agreement in which the purchaser acknowledges that he or she:

(i) Has received the written disclosure statement;

(ii) Understands the investment involves a high level of risk; and

(iii) Has the financial resources to withstand the total loss of the money invested; and

(g) The issuer, within thirty days after the completion of the offering, files with the Department of Banking and Finance a statement indicating the number of investors, the total dollar amount raised, and the use of the offering proceeds.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or

vacate the order. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under the act, the burden of proving an exemption from a definition shall be upon the person claiming it.

Source: Laws 1965, c. 549, § 11, p. 1787; Laws 1973, LB 167, § 6; Laws 1977, LB 263, § 5; Laws 1978, LB 760, § 2; Laws 1980, LB 496, § 1; Laws 1986, LB 909, § 11; Laws 1987, LB 93, § 1; Laws 1989, LB 60, § 3; Laws 1990, LB 956, § 10; Laws 1991, LB 305, § 5; Laws 1992, LB 758, § 2; Laws 1993, LB 216, § 7; Laws 1994, LB 1241, § 1; Laws 1995, LB 96, § 1; Laws 1996, LB 1053, § 9; Laws 1997, LB 335, § 7; Laws 2000, LB 932, § 20; Laws 2001, LB 52, § 44; Laws 2002, LB 957, § 9; Laws 2006, LB 876, § 20; Laws 2010, LB814, § 1; Laws 2011, LB76, § 3; Laws 2013, LB205, § 2; Laws 2013, LB214, § 6.
Effective date September 6, 2013.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB205, section 2, with LB214, section 6, to reflect all amendments.

8-1114 Unlawful representation concerning merits of registration or exemption.

Neither the fact that an application for registration or notice filing under section 8-1103, a notice filing under section 8-1108.02, or a registration statement under section 8-1106 or 8-1107 has been filed, nor the fact that a person or security is effectively registered, shall constitute a finding by the director that any document filed under the Securities Act of Nebraska is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction shall mean that the director has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It shall be unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

Source: Laws 1965, c. 549, § 14, p. 1790; Laws 1997, LB 335, § 8; Laws 2013, LB214, § 7.
Effective date September 6, 2013.

8-1118 Violations; damages; statute of limitations.

(1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer

owns the security, except that in actions brought based on a transaction exempt from registration under subdivision (23) of section 8-1111, no person shall be liable for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead, with the burden of proof in such cases being on the claimant. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Any investment adviser who provides investment adviser services to another person which results in a willful violation of subsection (2), (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or section 8-1114 or any investment adviser who employs any device, scheme, or artifice to defraud such person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such person shall be liable to such person. Such person may sue either at law or in equity to recover the consideration paid for the investment adviser services and any loss due to such investment adviser services, together with interest at six percent per annum from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such investment adviser services and any other economic benefit.

(3) Every person who directly or indirectly controls a person liable under subsections (1) and (2) of this section, including every partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or employee of such person who materially aids in the conduct giving rise to liability, and every broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(4) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under the Securities Act of Nebraska shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale or the rendering of investment advice. No person may sue under this section (a) if the buyer received a written offer, before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before suit and at a time when he or she did not own the security, unless the buyer rejected the offer in writing within thirty days of its receipt.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of the act or any rule or order under the act, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding

any person acquiring any security or receiving any investment advice to waive compliance with any provision of the act or any rule or order under the act shall be void.

Source: Laws 1965, c. 549, § 18, p. 1793; Laws 1973, LB 167, § 8; Laws 1993, LB 216, § 9; Laws 1993, LB 121, § 99; Laws 1994, LB 884, § 14; Laws 2013, LB205, § 3.
Effective date September 6, 2013.

8-1120 Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.

(1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such assistants or counsel as may be reasonably necessary for the purpose thereof and who may designate one of such assistants as an assistant director. The director may delegate to such assistant director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act, except that security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(2)(a) It shall be unlawful for the director or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. Neither the director nor any of his or her officers or employees shall disclose any confidential information except among themselves, when necessary or appropriate in a proceeding, examination, or investigation under the act, or as authorized in subdivision (2)(b) of this subsection. No provision of the act shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her officers or employees.

(b)(i) In administering the act, the director may also:

(A) Enter into agreements or relationships with other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations, to share resources, standardized or uniform methods or procedures, and documents, records, and information; or

(B) Accept and rely on examination or investigation reports made by other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations.

(ii) For purposes of this subdivision, foreign state means any state of the United States, other than the State of Nebraska, any territory of the United

States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, and the District of Columbia.

(3) The director may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the act. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act.

In prescribing rules and forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the director shall be published and made available to any person upon request.

(4) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(5) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(6) The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature. Any money in the Securities Act Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7)(a) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer one million two hundred fifty thousand dollars from the Securities Act Cash Fund to the Affordable Housing Trust Fund on or before September 1, 2013, and the State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer one million two hundred fifty thousand dollars from the Securities Act Cash Fund to the Affordable Housing Trust Fund on or before September 1, 2014.

(b) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer two hundred fifty thousand dollars from the Securities Act Cash Fund to the Homeless Shelter Assistance Trust Fund on or before September 1, 2013, and the State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer two hundred fifty thousand dollars from the Securities Act Cash Fund to the Homeless Shelter Assistance Trust Fund on or before September 1, 2014.

(c) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer five

hundred thousand dollars from the Securities Act Cash Fund to the Legal Aid and Services Fund on or before September 1, 2013, and the State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer five hundred thousand dollars from the Securities Act Cash Fund to the Legal Aid and Services Fund on or before September 1, 2014.

(8) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such conditions as the director may prescribe.

(9) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(10) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

Source: Laws 1965, c. 549, § 20, p. 1795; Laws 1969, c. 584, § 33, p. 2361; Laws 1973, LB 167, § 9; Laws 1983, LB 469, § 1; Laws 1995, LB 7, § 27; Laws 1997, LB 864, § 1; Laws 2000, LB 932, § 21; Laws 2003, LB 217, § 24; Laws 2013, LB199, § 17; Laws 2013, LB214, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB199, section 17, with LB214, section 8, to reflect all amendments.

Note: Changes made by LB199 became effective May 29, 2013. Changes made by LB214 became effective September 6, 2013.

Cross References

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

ARTICLE 27

NEBRASKA MONEY TRANSMITTERS ACT

Section
8-2701. Act, how cited.
8-2702. Definitions, where found.
8-2703. Applicant, defined.
8-2704. Authorized delegate, defined.
8-2705. Breach of security of the system, defined.
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Section

8-2701 Act, how cited.

Sections 8-2701 to 8-2748 shall be known and may be cited as the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 1.
Operative date January 1, 2014.

8-2702 Definitions, where found.

For purposes of the Nebraska Money Transmitters Act, the definitions found in sections 8-2703 to 8-2723 shall be used.

Source: Laws 2013, LB616, § 2.
Operative date January 1, 2014.

8-2703 Applicant, defined.

Applicant means a person filing an application for a license under the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 3.
Operative date January 1, 2014.

8-2704 Authorized delegate, defined.

Authorized delegate means an entity designated by the licensee or an exempt entity under the Nebraska Money Transmitters Act to engage in the business of money transmission on behalf of the licensee or exempt entity.

Source: Laws 2013, LB616, § 4.
Operative date January 1, 2014.

8-2705 Breach of security of the system, defined.

Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries.

Source: Laws 2013, LB616, § 5.
Operative date January 1, 2014.

8-2706 Control, defined.

Control means the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise. Any person who (1) has the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or any person in control of a licensee, (2) directly or indirectly has the right to vote ten percent or more of a class of stock or directly or indirectly has the power to sell or direct the sale of ten percent or more of a class of stock, (3) in the case of a limited liability company, is a managing member, or (4) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that licensee.

Source: Laws 2013, LB616, § 6.
Operative date January 1, 2014.

8-2707 Controlling person, defined.

Controlling person means any person in control of a licensee.

Source: Laws 2013, LB616, § 7.
Operative date January 1, 2014.

8-2708 Department, defined.

Department means the Department of Banking and Finance.

Source: Laws 2013, LB616, § 8.
Operative date January 1, 2014.

8-2709 Director, defined.

Director means the Director of Banking and Finance.

Source: Laws 2013, LB616, § 9.
Operative date January 1, 2014.

8-2710 Electronic instrument, defined.

Electronic instrument means a card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic strip, or other means for the storage of information, that is prefunded, and the value of which is decremented upon each use. Electronic instrument does not include a card or other tangible object that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 10.
Operative date January 1, 2014.

8-2711 Executive officer, defined.

Executive officer means the president, chairperson of the executive committee, senior officer responsible for business decisions, chief financial officer, and any other person who performs similar functions for a licensee.

Source: Laws 2013, LB616, § 11.
Operative date January 1, 2014.

8-2712 Key shareholder, defined.

Key shareholder means any person or group of persons acting in concert owning ten percent or more of any voting class of an applicant's stock.

Source: Laws 2013, LB616, § 12.
Operative date January 1, 2014.

8-2713 Licensee, defined.

Licensee means a person licensed pursuant to the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 13.
Operative date January 1, 2014.

8-2714 Material litigation, defined.

Material litigation means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in an applicant's or licensee's annual audited financial statements, report to shareholders, or similar documents.

Source: Laws 2013, LB616, § 14.
Operative date January 1, 2014.

8-2715 Monetary value, defined.

Monetary value means a medium of exchange, whether or not redeemable in money.

Source: Laws 2013, LB616, § 15.
Operative date January 1, 2014.

8-2716 Money transmission, defined.

Money transmission means the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, money transmission also includes bill payment services not limited to the right to receive payment of any claim for another but does not include bill payment services in which an agent of a payee receives money or monetary value on behalf of such payee.

Source: Laws 2013, LB616, § 16.
Operative date January 1, 2014.

8-2717 Nationwide Mortgage Licensing System and Registry, defined.

Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries.

Source: Laws 2013, LB616, § 17.
Operative date January 1, 2014.

8-2718 Outstanding payment instrument, defined.

Outstanding payment instrument means any payment instrument issued by a licensee which has been sold in the United States directly by the licensee or any payment instrument issued by a licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee.

Source: Laws 2013, LB616, § 18.
Operative date January 1, 2014.

8-2719 Payment instrument, defined.

Payment instrument means any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. Payment instrument does not include any credit card, any voucher, any letter of credit, or any instrument that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 19.
Operative date January 1, 2014.

8-2720 Permissible investments, defined.

Permissible investments means:

(1) Cash;

(2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the federal reserve system;

(4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(5) Investment securities that are obligations of the United States or its agencies or instrumentalities, obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state or political subdivision thereof;

(6) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one of more permissible investments as set forth in this section;

(7) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(8) Receivables that are due to a licensee from its authorized delegates pursuant to a contract described in section 8-2739 which are not past due or doubtful of collection; or

(9) Any other investment or similar security approved by the director.

Source: Laws 2013, LB616, § 20.
Operative date January 1, 2014.

8-2721 Person, defined.

Person means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation. Person does not include the United States or the State of Nebraska.

Source: Laws 2013, LB616, § 21.
Operative date January 1, 2014.

8-2722 Remit, defined.

Remit, except as used in section 8-2747, means either to make direct payment of the funds to a licensee or its representatives authorized to receive those funds or to deposit the funds in a bank, credit union, or savings and loan association or other similar financial institution in an account specified by a licensee.

Source: Laws 2013, LB616, § 22.
Operative date January 1, 2014.

8-2723 Stored value, defined.

Stored value means monetary value that is evidenced by an electronic record. Stored value does not include any item that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 23.
Operative date January 1, 2014.

8-2724 Licensure requirement; applicability.

(1) The requirement for a license under the Nebraska Money Transmitters Act does not apply to:

(a) The United States or any department, agency, or instrumentality thereof;

(b) Any post office of the United States Postal Service;

(c) A state or any political subdivision thereof;

(d)(i) Banks, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States;

(ii) Subsidiaries of the institutions listed in subdivision (d)(i) of this subsection;

(iii) Bank holding companies which have a banking subsidiary located in Nebraska and whose debt securities have an investment grade rating by a national rating agency; or

(iv) Authorized delegates of the institutions and entities listed in subdivision (d)(i), (ii), or (iii) of this subsection, except that authorized delegates that are not banks, credit unions, building and loan associations, savings and loan associations, savings banks, mutual banks, subsidiaries of any of the foregoing, or bank holding companies shall comply with all requirements imposed upon authorized delegates under the act;

(e) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency, as defined in Consumer Financial Protection Bureau Regulation E, 12 C.F.R. part 1005, as such regulation existed on January 1, 2013, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof or any state or any political subdivision thereof; or

(f) An operator of a payment system only to the extent that the payment system provides processing, clearing, or settlement services between or among persons who are all exempt under this section in connection with wire transfers, credit card transactions, debit card transactions, automated clearinghouse transfers, or similar fund transfers.

(2) An authorized delegate of a licensee or of an exempt entity, acting within the scope of its authority conferred by a written contract as described in section 8-2739, is not required to obtain a license under the Nebraska Money Transmitters Act, except that such an authorized delegate shall comply with the other provisions of the act which apply to money transmission transactions.

Source: Laws 2013, LB616, § 24.
Operative date January 1, 2014.

8-2725 License required; license not transferable or assignable.

(1) Except as otherwise provided in section 8-2724, a person shall not engage in money transmission without a license issued pursuant to the Nebraska Money Transmitters Act.

(2) A person is engaged in money transmission if the person provides money transmission services to any resident of this state even if the person providing money transmission services has no physical presence in this state.

(3) If a licensee has a physical presence in this state, the licensee may conduct its business at one or more locations, directly or indirectly owned, or

through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

(4) A license issued pursuant to the act is not transferable or assignable.

Source: Laws 2013, LB616, § 25.
Operative date January 1, 2014.

8-2726 License; applicant; qualifications; requirements.

To qualify for a license under the Nebraska Money Transmitters Act, an applicant, at the time of filing for a license, and a licensee at all times after a license is issued, shall satisfy the following requirements:

(1) Each applicant or licensee must have a net worth of not less than fifty thousand dollars, calculated in accordance with generally accepted accounting principles;

(2) The financial condition and responsibility, financial and business experience, and character and general fitness of the applicant or licensee must reasonably warrant the belief that the applicant's or licensee's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community. In determining whether this requirement is met and for purposes of investigating compliance with the act, the director may review and consider the relevant business records and capital adequacy of the applicant or licensee;

(3) Each corporate applicant or licensee must be in good standing in the state of its incorporation; and

(4) Each applicant or licensee must be registered or qualified to do business in the state.

Source: Laws 2013, LB616, § 26.
Operative date January 1, 2014.

8-2727 License applicant; surety bond; alternate security; duration.

(1)(a) Each applicant shall submit, with the application, a surety bond issued by a bonding company or insurance company authorized to do business in this state and acceptable to the director in the principal sum of one hundred thousand dollars and in an additional principal sum of five thousand dollars for each location, in excess of one, at which the applicant proposes to sell and issue payment instruments or engage in money transmission in this state, up to a maximum of two hundred fifty thousand dollars. The director may increase the amount of the bond to a maximum of two hundred fifty thousand dollars for good cause. The bond shall be in a form satisfactory to the director and shall run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with money transmission. In the case of a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond. Any claimant against the licensee may bring suit directly on the bond or the director may bring suit on behalf of any claimant, either in one action or in successive actions.

(b) The director may at any time require the filing of a new or supplemental bond in the form as provided in subdivision (a) of this subsection if he or she determines that the bond filed under this section is exhausted or is inadequate for any reason, including, but not limited to, the financial condition of a

licensee or an applicant for a license or violations of the Nebraska Money Transmitters Act, any rule, regulation, or order thereunder, or any state or federal law applicable to a licensee or an applicant for a license. The new or supplemental bond shall not exceed five hundred thousand dollars.

(2) In lieu of the corporate surety bond or bonds required by subsection (1) of this section or of any portion of the principal thereof as required by such subsection, the applicant or licensee may deposit, with the director or with such banks or trust companies located in this state or with any federal reserve bank as the applicant or licensee may designate and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and held to secure the same obligations as would the surety bond. The licensee shall have the right, with the approval of the director, to substitute other securities for those deposited and shall be required to do so on written order of the director made for good cause shown. The licensee shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the licensee so depositing shall continue solvent and is not in violation of the Nebraska Money Transmitters Act, such licensee shall be permitted to receive the interest or dividends on such deposit. The safekeeping of such securities and all other expenses incidental to the pledging of such securities shall be paid by the licensee. All such securities shall be subject to sale and transfer and to the disposal of the proceeds by the director only on the order of a court of competent jurisdiction.

(3) The surety bond shall remain in effect until cancellation, which may occur only after thirty days' written notice to the director. Cancellation shall not affect any liability incurred or accrued during the period the surety bond was in effect.

(4) The surety bond shall remain in place for at least five years after the licensee ceases money transmission in this state, except that the director may permit the surety bond to be reduced or eliminated before that time to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director may also permit a licensee to substitute a letter of credit or such other form of security acceptable to the director for the surety bond in place at the time the licensee ceases money transmission in the state.

Source: Laws 2013, LB616, § 27.
Operative date January 1, 2014.

8-2728 Licensee; investments required; waiver.

(1) Each licensee shall at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States. This requirement may be waived by the director if the dollar volume of a licensee's outstanding payment instruments and stored

value does not exceed the bond or other security posted by the licensee pursuant to section 8-2727.

(2) Permissible investments, even if commingled with other assets of the licensee, are deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

Source: Laws 2013, LB616, § 28.
Operative date January 1, 2014.

8-2729 License application; form; contents.

Each application for a license under the Nebraska Money Transmitters Act shall be made in writing and in a form prescribed by the director. Each application shall state or contain:

(1) For all applicants:

(a) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;

(b) The history of the applicant's criminal convictions and material litigation for the five-year period before the date of the application;

(c) A description of the activities conducted by the applicant and a history of operations;

(d) A description of the business activities in which the applicant seeks to be engaged in this state;

(e) A list identifying the applicant's proposed authorized delegates in this state, if any, at the time of the filing of the application;

(f) A sample authorized delegate contract, if applicable;

(g) A sample form of payment instrument, if applicable;

(h) The locations at which the applicant and its authorized delegates, if any, propose to conduct money transmission in this state; and

(i) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable;

(2) If the applicant is a corporation, the applicant shall also provide:

(a) The date of the applicant's incorporation and state of incorporation;

(b) A certificate of good standing from the state in which the applicant was incorporated;

(c) A certificate of authority from the Secretary of State to conduct business in this state;

(d) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and a disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(e) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed under the act;

(f) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of any key shareholder of the applicant;

(g) The history of criminal convictions and material litigation for the five-year period immediately before the date of the application of every executive officer or key shareholder of the applicant;

(h) A copy of the applicant's most recent audited financial statement including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position and, if available, the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's Form 10-K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this subdivision; and

(i) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application; and

(3) If the applicant is not a corporation, the applicant shall also provide:

(a) The name, business and residence addresses, personal financial statement, and employment history, for the five-year period immediately before the date of the application, of each principal of the applicant and the name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of any other person or persons who will be in charge of the applicant's money transmission activities;

(b) A copy of the applicant's registration or qualification to do business in this state;

(c) The history of criminal convictions and material litigation for the five-year period immediately before the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and

(d) Copies of the applicant's audited financial statements including balance sheet, statement of income or loss, and statement of changes in financial position for the current year and, if available, for the immediately preceding two-year period.

Source: Laws 2013, LB616, § 29.
Operative date January 1, 2014.

8-2730 Licensee; license and registration through Nationwide Mortgage Licensing System and Registry; department; powers; director; reports; duties; department; duties.

(1) Effective July 1, 2014, the department shall require licensees under the Nebraska Money Transmitters Act to be licensed and registered through the

Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but are not limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

(i) Checks of an applicant's or a licensee's criminal history through fingerprint or other data bases, except that the department shall not require the submission of fingerprints by (A) an executive officer or director of an applicant or licensee which is either a publicly traded company or a wholly owned subsidiary of a publicly traded company or (B) an applicant or licensee who has previously submitted the fingerprints of an executive officer or director directly to the Nationwide Mortgage Licensing System and Registry and the Federal Bureau of Investigation will accept such fingerprints for a criminal background check;

(ii) Checks of civil or administrative records;

(iii) Checks of an applicant's or a licensee's credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) The setting or resetting, as necessary, of renewal processing or reporting dates;

(d) Information and reports pertaining to authorized delegates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 8-2731.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and breach of security of the system notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide

Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Source: Laws 2013, LB616, § 30.
Operative date January 1, 2014.

8-2731 Supervisory information sharing; information and material; how treated; applicability; director; powers.

(1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with money transmitter industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(b) Information or material that is subject to privilege or confidentiality under subdivision (a) of this subsection shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) Subpoena or discovery or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (a) of this subsection that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, the Money Transmitter Regulators Association, or other associa-

tions representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director.

Source: Laws 2013, LB616, § 31.
Operative date January 1, 2014.

8-2732 Application fee; processing fee.

Each applicant shall submit, with the application, an application fee of one thousand dollars, and any processing fee allowed under subsection (2) of section 8-2730 which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof.

Source: Laws 2013, LB616, § 32.
Operative date January 1, 2014.

8-2733 Application; director; duties; powers; onsite investigation; costs; denial of application; reasons; hearing.

(1) Upon the filing of a complete application under the Nebraska Money Transmitters Act, the director shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The director may conduct an onsite investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the director finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by the act and has paid the required application or license fee, the director shall issue a license to the applicant authorizing the applicant to engage in money transmission in this state. If these requirements have not been met, the director shall deny the application in writing, setting forth the reasons for the denial.

(2) The director shall approve or deny every application for an original license within one hundred twenty days after the date a complete application is submitted, which period may be extended by the written consent of the applicant. The director shall notify the applicant of the date when the application is deemed complete.

(3) Any applicant aggrieved by a denial issued by the director under the act may, at any time within fifteen business days after the date of the denial, request a hearing before the director. The hearing shall be held in accordance with the Administrative Procedure Act and rules and regulations of the department.

Source: Laws 2013, LB616, § 33.
Operative date January 1, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

8-2734 License; renewal application; licensing fee; processing fee; report; contents.

(1)(a) All initial licenses shall remain in full force and effect until the next succeeding July 1. Beginning July 1, 2014, initial licenses shall remain in full force and effect until the next succeeding December 31. Thereafter, each licensee shall, annually on or before December 31 of each year, file a license renewal application and pay to the director a license fee of two hundred fifty

dollars and any processing fee allowed under subsection (2) of section 8-2730, both of which shall not be subject to refund.

(b) Licenses which expire on July 1, 2014, may be renewed until December 31, 2014, upon submission of a license renewal application and compliance with subsection (2) of this section. For such renewals, the department shall prorate the license fee provided in subdivision (1)(a) of this section using a factor of six-twelfths.

(2) The renewal application and license fee shall be accompanied by a report, in a form prescribed by the director, which shall include:

(a) A copy of the licensee's most recent audited consolidated annual financial statement including balance sheet, statement of income or loss, statement of changes in shareholders' equity, and statement of changes in financial position, or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

(b) The number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of payment instruments currently outstanding, for the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty days before the renewal date;

(c) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the director on any other report required to be filed under the Nebraska Money Transmitters Act;

(d) A list of the licensee's permissible investments; and

(e) A list of the locations, if any, within this state at which money transmission is being conducted by either the licensee or its authorized delegates.

Source: Laws 2013, LB616, § 34.
Operative date January 1, 2014.

8-2735 Licensee; notice to director; when; report; contents.

(1) A licensee shall file notice with the director within thirty calendar days after any material change in information provided in a licensee's application as prescribed by the director.

(2) A licensee shall file a report with the director within five business days after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under any bankruptcy law of the United States for liquidation or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The filing of an action to revoke or suspend the licensee's license in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond or other security;

(e) A charge or conviction of the licensee or of an executive officer, manager, or director of, or controlling person of, the licensee, for a felony; or

(f) A charge or conviction of an authorized delegate for a felony.

Source: Laws 2013, LB616, § 35.
Operative date January 1, 2014.

8-2736 Acquisition of control of licensee; notice to director; director; duties; powers; disapproval; grounds; notice; hearing.

(1) No person acting personally or as an authorized delegate shall acquire control of any licensee under the Nebraska Money Transmitters Act without first giving thirty days' notice to the director on forms prescribed by the director of such proposed acquisition.

(2) The director, upon receipt of such notice, shall act upon the proposed acquisition within thirty days, and unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring person has not furnished all the information required by the director.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired licensee;

(ii) The business experience, character, and general fitness of any acquiring person or of any of the proposed management personnel of the acquiring person indicate that the acquired licensee would not be operated honestly, carefully, or efficiently; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the director.

(b) The director may require that any acquiring person comply with the application requirements of section 8-2729.

(c) The director shall notify the acquiring person in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(d) Within fifteen business days after receipt of written notice of disapproval, the acquiring person may request a hearing on the proposed acquisition. The hearing shall be in accordance with the Administrative Procedure Act and rules and regulations of the department. Following such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Source: Laws 2013, LB616, § 36.
Operative date January 1, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

8-2737 Onsite examination of licensee; notice; examination fee; costs; director; powers.

(1) The director may conduct an annual onsite examination of a licensee upon reasonable written notice to the licensee. The director may examine a licensee without prior notice if the director has a reasonable basis to believe that the licensee is in noncompliance with the Nebraska Money Transmitters Act. If the director concludes that an onsite examination of a licensee is necessary, the licensee shall pay an examination fee and the director shall charge for the actual cost of the examination at an hourly rate set by the director which is sufficient to cover all reasonable expenses associated with the examination. The onsite examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The director, in lieu of an onsite examination, may accept the examination report of an agency of another state or a report prepared by an independent accounting firm. Reports so accepted are considered for all purposes as an official report of the director. The licensee shall be responsible for the reasonable expenses incurred by the department, the agencies of another state, or an independent licensed or certified public accountant in making the examination or report.

(2) The director may request financial data from a licensee in addition to that required under section 8-2734 or conduct an onsite examination of any authorized delegate or location of a licensee within this state without prior notice to the authorized delegate or licensee only if the director has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with the Nebraska Money Transmitters Act. When the director examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of such examination. When the director examines a licensee's location, the licensee shall pay all reasonably incurred costs of such examination.

Source: Laws 2013, LB616, § 37.
Operative date January 1, 2014.

8-2738 Licensee; books, accounts, and records.

(1) Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of three years which shall be open to inspection by the director:

(a) A record of each payment instrument and stored value sold;

(b) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly;

(c) Settlement sheets received from authorized delegates;

(d) Bank statements and bank reconciliation records;

(e) Records of outstanding payment instruments and stored value;

(f) Records of each payment instrument and stored value paid;

(g) A list of the names and addresses of all of the licensee's authorized delegates; and

(h) Any other records the director reasonably requires by rule or regulation or order.

(2) Maintenance of such documents as are required by this section in a photographic, electronic, or other similar form constitutes compliance with this section.

(3) Records may be maintained at a location other than within this state so long as the records are made accessible to the director on seven business days' written notice.

Source: Laws 2013, LB616, § 38.
Operative date January 1, 2014.

8-2739 Licensee; authorized delegate; contract; contents.

A licensee desiring to conduct money transmission through an authorized delegate shall authorize each authorized delegate to operate pursuant to an express written contract which, for contracts entered into on or after January 1, 2014, shall provide the following:

(1) That the licensee appoints the person as its authorized delegate with authority to engage in the sale and issue of payment instruments or engage in the business of money transmission on behalf of the licensee;

(2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the director; and

(3) That the licensee is subject to supervision and regulation by the director.

Source: Laws 2013, LB616, § 39.
Operative date January 1, 2014.

8-2740 Authorized delegate; duties.

(1) An authorized delegate shall not make any fraudulent or false statement or misrepresentation to a licensee or to the director.

(2) An authorized delegate shall conduct all money transmission strictly in accordance with the licensee's written procedures provided to the authorized delegate.

(3) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(4) An authorized delegate is deemed to consent to the director's inspection with or without prior notice to the licensee or authorized delegate.

(5) An authorized delegate is under a duty to act only as authorized under the contract with the licensee and the Nebraska Money Transmitters Act. An authorized delegate who exceeds its authority is subject to cancellation of its contract and further disciplinary action by the director.

(6) All funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission shall, from the time such funds are received by such authorized delegate until such time when the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other

property is impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

Source: Laws 2013, LB616, § 40.
Operative date January 1, 2014.

8-2741 License; suspension or revocation; grounds; director; powers and duties; hearing; surrender; cancellation; expiration.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Nebraska Money Transmitters Act if he or she finds:

(a) Any fact or condition exists that, if it had existed at the time when the licensee applied for its original or renewal license, would have been grounds for denying such application;

(b) The licensee's net worth has become inadequate and the licensee, after ten days' written notice from the director, failed to take such steps as the director deems necessary to remedy such deficiency;

(c) The licensee knowingly violated any material provision of the act or any rule or order validly adopted and promulgated under the act;

(d) The licensee conducted money transmission in an unsafe or unsound manner;

(e) The licensee is insolvent;

(f) The licensee has suspended payment of its obligations, made an assignment for the benefit of its creditors, or admitted in writing its inability to pay its debts as they became due;

(g) The licensee filed for liquidation or reorganization under any bankruptcy law;

(h) The licensee refused to permit the director to make any examination authorized by the act; or

(i) The licensee willfully failed to make any report required by the act.

(2) In determining whether a licensee is engaging in an unsafe or unsound practice, the director may consider the size and condition of the licensee's money transmission, the magnitude of the loss, if any, the gravity of the violation of the act, and the previous conduct of the licensee.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, key shareholders, partners, or members for acts committed before the surrender.

(4)(a) If a licensee fails to renew its license as required by section 8-2734 and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 8-2727, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, key shareholders, partners, or members for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 2013, LB616, § 41.
Operative date January 1, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

8-2742 Authorized delegate; suspension or revocation of designation; grounds; director; powers and duties; hearing; final order; application to modify or rescind.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, issue an order suspending or revoking the designation of an authorized delegate if the director finds that:

(a) The authorized delegate violated the Nebraska Money Transmitters Act or a rule or regulation adopted and promulgated or an order issued under the act;

(b) The authorized delegate did not cooperate with an examination or investigation by the director;

(c) The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(d) The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(e) The competence, experience, character, or general fitness of the authorized delegate or a controlling person of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to engage in money transmission services; or

(f) The authorized delegate is engaged in an unsafe or unsound practice.

(2) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's money transmission, the magnitude of the loss, if any, the gravity of the violation of the act, and the previous conduct of the authorized delegate.

(3) Any authorized delegate to whom a final order is issued under this section may apply to the director to modify or rescind the order. The director shall not grant the application unless the director finds that (a) it is in the public interest to do so and (b) it is reasonable to believe that the person will comply with the act and any rule, regulation, or order issued under the act if and when that person is permitted to resume being an authorized delegate of a licensee.

Source: Laws 2013, LB616, § 42.
Operative date January 1, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

8-2743 Cease and desist order; notice; hearing; vacation or modification of order; when; judicial review; enforcement.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated the Nebraska Money Transmitters Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of a written request from the affected person, a hearing will be scheduled within thirty business days after the date of receipt of the written request, unless the parties consent to a later date or the hearing officer sets a later date for good cause. The hearing shall be held in accordance with the Administrative Procedure Act and rules and regulations of the department. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may issue an order against a licensee to cease and desist from engaging in money transmission through an authorized delegate that is the subject of a separate order pursuant to section 8-2742.

(3) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(4) A person aggrieved by a cease and desist order of the department may obtain judicial review of the order. The review shall be in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for enforcement of the cease and desist order.

Source: Laws 2013, LB616, § 43.
Operative date January 1, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

8-2744 Violations; orders authorized.

If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has violated the Nebraska Money Transmitters Act or any rule, regulation, or order of the director thereunder, the director may order such person to pay (1) an administrative fine of not more than five thousand dollars for each separate violation and (2) the costs of investigation.

Source: Laws 2013, LB616, § 44.
Operative date January 1, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

8-2745 Violations; penalties.

(1) Except as provided in subsections (2) and (3) of this section, any person violating the Nebraska Money Transmitters Act or any rule, regulation, or order of the director made pursuant to the act or who engages in any act, practice, or

transaction declared by the Nebraska Money Transmitters Act to be unlawful is guilty of a Class III misdemeanor.

(2) A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under the act or who intentionally makes a false entry or omits a material entry in such a record is guilty of a Class I misdemeanor.

(3) An individual who knowingly engages in money transmission for which a license is required under the act without being licensed under the act is guilty of a Class I misdemeanor.

Source: Laws 2013, LB616, § 45.
Operative date January 1, 2014.

8-2746 Rules and regulations.

The director may adopt and promulgate rules and regulations and issue orders, rulings, findings, and demands as may be necessary to carry out the purposes of the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 46.
Operative date January 1, 2014.

8-2747 Fees, charges, costs, and fines; disposition.

(1) The department shall remit all fees, charges, and costs collected by the department pursuant to the Nebraska Money Transmitters Act to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

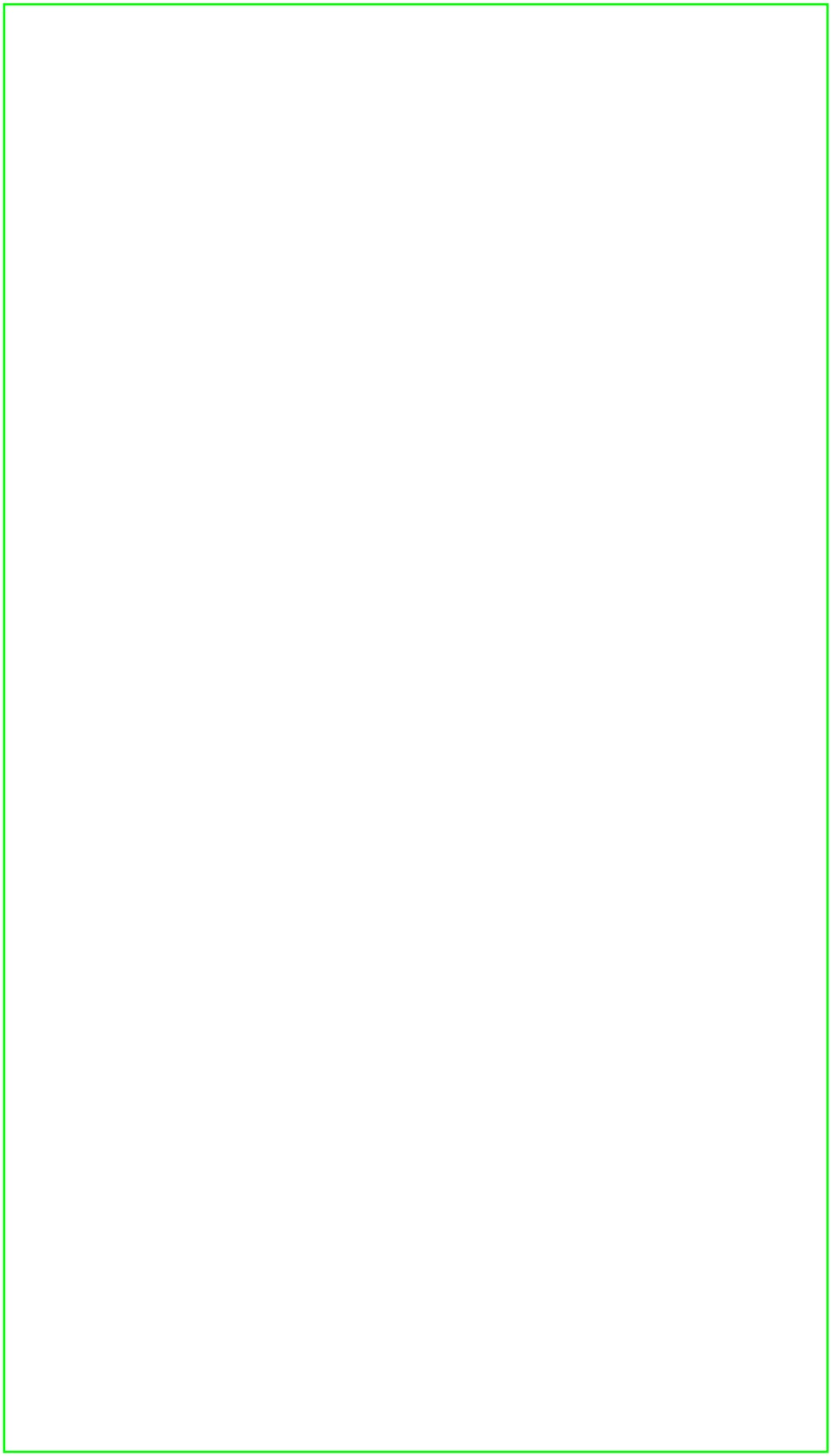
(2) The department shall remit fines collected under the act to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2013, LB616, § 47.
Operative date January 1, 2014.

8-2748 License under Nebraska Sale of Checks and Funds Transmission Act; how treated.

A license issued under the Nebraska Sale of Checks and Funds Transmission Act as it existed immediately before January 1, 2014, remains in force as a license under the Nebraska Money Transmitters Act until the license's expiration date. Thereafter, the licensee shall be treated as if the licensee had applied for and had received a license under the Nebraska Money Transmitters Act and shall be required to comply with the renewal requirements set forth in the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 48.
Operative date January 1, 2014.



CHAPTER 9
BINGO AND OTHER GAMBLING

Article.
1. General Provisions. 9-1,101.
6. County and City Lotteries. 9-614.
8. State Lottery. 9-812 to 9-836.01.
10. Nebraska Commission on Problem Gambling. 9-1001 to 9-1007.

ARTICLE 1
GENERAL PROVISIONS

Section
9-1,101. Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

9-1,101 Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

(1) The Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and section 9-701 shall be administered and enforced by the Charitable Gaming Division of the Department of Revenue, which division is hereby created. The Department of Revenue shall make annual reports to the Governor, Legislature, Auditor of Public Accounts, and Attorney General on all tax revenue received, expenses incurred, and other activities relating to the administration and enforcement of such acts. The report submitted to the Legislature shall be submitted electronically.

(2) The Charitable Gaming Operations Fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3)(a) Forty percent of the taxes collected pursuant to sections 9-239, 9-344, 9-429, and 9-648 shall be available to the Charitable Gaming Division for administering and enforcing the acts listed in subsection (1) of this section and providing administrative support for the Nebraska Commission on Problem Gambling. The remaining sixty percent shall be transferred to the General Fund. Any portion of the forty percent not used by the division in the administration and enforcement of such acts and section shall be distributed as provided in this subsection.

(b) On or before November 1 each year, the State Treasurer shall transfer fifty thousand dollars from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund, except that no transfer shall occur if the Charitable Gaming Operations Fund contains less than fifty thousand dollars.

(c) Any money remaining in the Charitable Gaming Operations Fund after the transfer pursuant to subdivision (b) of this subsection not used by the Charitable Gaming Division in its administration and enforcement duties pursuant to this section may be transferred to the General Fund at the direction of the Legislature.

(4) The Tax Commissioner shall employ investigators who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device. For purposes of enforcing sections 28-1101 to 28-1117, the authority of the investigators shall be limited to investigating possession of a gambling device, notifying local law enforcement authorities, and reporting suspected violations to the county attorney for prosecution.

(5) The Charitable Gaming Division may charge a fee for publications and listings it produces. The fee shall not exceed the cost of publication and distribution of such items. The division may also charge a fee for making a copy of any record in its possession equal to the actual cost per page. The division shall remit the fees to the State Treasurer for credit to the Charitable Gaming Operations Fund.

(6) For administrative purposes only, the Nebraska Commission on Problem Gambling shall be located within the Charitable Gaming Division. The division shall provide office space, furniture, equipment, and stationery and other necessary supplies for the commission. Commission staff shall be appointed, supervised, and terminated by the director of the Gamblers Assistance Program pursuant to section 9-1004.

Source: Laws 1986, LB 1027, § 185; Laws 1988, LB 1232, § 1; Laws 1989, LB 767, § 1; Laws 1990, LB 1055, § 3; Laws 1991, LB 427, § 1; Laws 1993, LB 397, § 1; Laws 1994, LB 694, § 1; Laws 1994, LB 1066, § 8; Laws 2000, LB 659, § 1; Laws 2001, LB 541, § 2; Laws 2002, LB 1310, § 2; Laws 2007, LB638, § 1; Laws 2010, LB879, § 1; Laws 2012, LB782, § 11; Laws 2013, LB6, § 8.
Operative date July 1, 2013.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
Nebraska State Funds Investment Act, see section 72-1260.
State Athletic Commissioner, office and duties, see section 81-8,128.

ARTICLE 6
COUNTY AND CITY LOTTERIES

Section
9-614. Lottery operator, defined.

9-614 Lottery operator, defined.

Lottery operator shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which operates a lottery on behalf of a county, city, or village.

A lottery operator shall be a resident of Nebraska or, if a partnership, limited liability company, or corporation, shall be organized under the laws of this state as a partnership, formed under the Nebraska Uniform Limited Liability Company Act, or incorporated under the Business Corporation Act.

Source: Laws 1989, LB 767, § 55; Laws 1990, LB 1055, § 6; Laws 1993, LB 121, § 114; Laws 1995, LB 109, § 194; Laws 2010, LB888, § 98; Laws 2013, LB283, § 1.
Effective date September 6, 2013.

Cross References

Business Corporation Act, see section 21-2001.
Nebraska Uniform Limited Liability Company Act, see section 21-101.

ARTICLE 8
STATE LOTTERY

Section

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

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

(2) A portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund as provided in subsection (3) of this section. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director

may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

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

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006;

(b) Beginning July 1, 2016, forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Education Improvement Fund;

(c) Through June 30, 2016, nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(d) Through June 30, 2016, twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Opportunity Grant Fund;

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

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

(g) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006.

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

(b) For fiscal year 2012-13, the Education Innovation Fund shall be allocated as follows: (i) The first forty-five thousand dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Attracting Excellence to Teaching Program; (ii) the next three million three hundred sixty-five thousand nine hundred sixty-two dollars shall be distributed to school districts as grants pursuant to the Early Childhood Education Grant Program; (iii) the next two

million one hundred seventy-five thousand six hundred seventy-three dollars shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02; (iv) the next one hundred eight thousand one hundred thirty-six dollars shall be used by the State Department of Education for the development of an integrated early childhood, elementary, secondary, and postsecondary student information system; (v) the next four hundred fifty thousand dollars shall fund the Center for Student Leadership and Extended Learning Act; (vi) the next one hundred fourteen thousand six hundred twenty-nine dollars shall be used by the department to fund the multicultural education program created under section 79-720; (vii) the next one hundred twenty-three thousand four hundred sixty-eight dollars shall be used by the department to employ persons to investigate and prosecute alleged violations as provided in section 79-868; (viii) up to the next one hundred sixty thousand dollars shall be used by the department to implement section 79-759; (ix) the next twenty-seven thousand two hundred dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (x) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; and (xi) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337. No funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016.

(c) For fiscal year 2013-14, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) up to the next one hundred sixty thousand dollars shall be used by the State Department of Education to implement section 79-759; (iv) the next one million seven hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the department pursuant to section 79-1103; (v) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (vi) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; (vii) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; (viii) the next eighty-five thousand five hundred fifty dollars shall be allocated to the State Department of Education for distribution pursuant to section 79-2306; and (ix) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337. No funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016.

(d) For fiscal year 2014-15, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the

next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next one million eight hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the State Department of Education pursuant to section 79-1103; (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next two hundred thousand dollars shall be used to provide grants to establish bridge programs pursuant to sections 79-1189 to 79-1195; (vi) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; and (vii) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337. No funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016.

(e) For fiscal year 2015-16, the Education Innovation Fund shall be allocated as follows: (i) The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act; (ii) the next allocation shall be distributed to local systems as grants for approved accelerated or differentiated curriculum programs for students identified as learners with high ability pursuant to section 79-1108.02 in an aggregated amount up to the amount distributed in the prior fiscal year for such purposes increased by the basic allowable growth rate pursuant to section 79-1025; (iii) the next one million nine hundred fifty thousand dollars shall be allocated to early childhood education grants awarded by the State Department of Education pursuant to section 79-1103; (iv) the next one million dollars shall be transferred to the Early Childhood Education Endowment Cash Fund for use pursuant to section 79-1104.02; (v) the next ten thousand dollars shall be used to fund the Interstate Compact on Educational Opportunity for Military Children; and (vi) the amount remaining shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337. No funds received as allocations from the Education Innovation Fund pursuant to this subdivision may be obligated for payment to be made after June 30, 2016.

(f) The Education Innovation Fund terminates on June 30, 2016. Any money in the fund on such date shall be transferred to the Nebraska Education Improvement Fund on such date.

(5) The Nebraska Education Improvement Fund is created. The fund shall consist of money transferred pursuant to subsections (3) and (4) of this section, money transferred pursuant to section 85-1920, and any other funds appropriated by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

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

(8) It is the intent of the Legislature to replace funding from the Education Innovation Fund with General Fund appropriations to the State Department of Education beginning with FY2013-14 for (a) the integrated early childhood, elementary, secondary, and postsecondary student information system, (b) the Center for Student Leadership and Extended Learning Act, (c) the multicultural education program created under section 79-720, and (d) the employment of persons to investigate and prosecute alleged violations as provided in section 79-868.

Source: Laws 1991, LB 849, § 12; Laws 1992, LB 1257, § 57; Laws 1993, LB 138, § 28; Laws 1993, LB 563, § 24; Laws 1994, LB 647, § 5; Laws 1994, LB 694, § 119; Laws 1994, LB 1066, § 11; Laws 1995, LB 275, § 1; Laws 1995, LB 860, § 1; Laws 1996, LB 900, § 1015; Laws 1996, LB 1069, § 1; Laws 1997, LB 118, § 1; Laws 1997, LB 347, § 1; Laws 1997, LB 710, § 1; Laws 1997, LB 865, § 1; Laws 1998, LB 924, § 16; Laws 1998, LB 1228, § 7; Laws 1998, LB 1229, § 1; Laws 1999, LB 386, § 1; Laws 2000, LB 659, § 2; Laws 2000, LB 1243, § 1; Laws 2001, LB 797, § 1; Laws 2001, LB 833, § 1; Laws 2001, Spec. Sess., LB 3, § 1; Laws 2002, LB 1105, § 418; Laws 2002, LB 1310, § 3; Laws 2002, Second Spec. Sess., LB 1, § 1; Laws 2003, LB 367, § 1; Laws 2003, LB 574, § 21; Laws 2004, LB 1083, § 83; Laws 2004, LB 1091, § 1; Laws 2006, LB 1208, § 1; Laws 2007, LB638, § 16; Laws 2009, LB286, § 4; Laws 2009, LB545, § 1; Laws 2009, LB547, § 1; Laws 2009, First Spec. Sess., LB2, § 1; Laws 2010, LB956, § 1; Laws 2011, LB333, § 1; Laws 2011, LB575, § 7; Laws 2011, LB637, § 22; Laws 2012, LB1079, § 9; Laws 2013, LB6, § 9; Laws 2013, LB366, § 8; Laws 2013, LB495, § 1; Laws 2013, LB497, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB6, section 9, with LB366, section 8, LB495, section 1, and LB497, section 1, to reflect all amendments.

Note: Changes made by LB495 became effective April 25, 2013. Changes made by LB497 became effective May 30, 2013. Changes made by LB366 became effective June 5, 2013. Changes made by LB6 became operative July 1, 2013.

Cross References

Center for Student Leadership and Extended Learning Act, see section 79-772.
Excellence in Teaching Act, see section 79-8,132.
Interstate Compact on Educational Opportunity for Military Children, see section 79-2201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Environmental Trust Act, see section 81-15,167.
Nebraska State Funds Investment Act, see section 72-1260.

9-831 Advertising on problem gambling prevention, education, and awareness messages; requirements.

The division shall spend not less than five percent of the advertising budget for the state lottery on problem gambling prevention, education, and awareness messages. The division shall coordinate messages developed under this section with the prevention, education, and awareness messages in use by or developed in conjunction with the Gamblers Assistance Program established pursuant to section 9-1005. For purposes of this section, the advertising budget for the state lottery includes amounts budgeted and spent for advertising, promotions,

incentives, public relations, marketing, or contracts for the purchase or lease of goods or services that include advertising, promotions, incentives, public relations, or marketing, but does not include in-kind contributions by media outlets.

Source: Laws 2006, LB 1039, § 2; Laws 2013, LB6, § 10.
Operative date July 1, 2013.

9-836.01 Division; sale of tangible personal property; distribution of profits.

The division may endorse and sell for profit tangible personal property related to the lottery. Any money received as profit by the division pursuant to this section shall be remitted to the State Treasurer for credit to the State Lottery Operation Trust Fund to be distributed to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund pursuant to the requirements of section 9-812.

Source: Laws 1994, LB 694, § 118; Laws 1998, LB 924, § 17; Laws 2003, LB 574, § 22; Laws 2010, LB956, § 2; Laws 2013, LB497, § 2.
Effective date May 30, 2013.

ARTICLE 10

NEBRASKA COMMISSION ON PROBLEM GAMBLING

Section
9-1001. Funding for assistance to problem gamblers; legislative findings and intent.
9-1002. Terms, defined.
9-1003. Nebraska Commission on Problem Gambling; created; members; terms; vacancies; meetings.
9-1004. Commission; officers; expenses; duties; director; duties; rules and regulations; report.
9-1005. Gamblers Assistance Program; created; duties.
9-1006. Compulsive Gamblers Assistance Fund; created; use; investment.
9-1007. Division of Behavioral Health of Department of Health and Human Services or department; restriction on expenditures; contracts; how treated; Compulsive Gamblers Assistance Fund; use.

9-1001 Funding for assistance to problem gamblers; legislative findings and intent.

The Legislature finds that the main sources of funding for assistance to problem gamblers are the Charitable Gaming Operations Fund as provided in section 9-1,101 and the State Lottery Operation Trust Fund as provided in section 9-812. It is the intent of the Legislature that such funding be used primarily for counseling and treatment services for problem gamblers and their families who are residents of Nebraska.

Source: Laws 2013, LB6, § 1.
Operative date May 26, 2013.

9-1002 Terms, defined.

For purposes of sections 9-1001 to 9-1007:

(1) Commission means the Nebraska Commission on Problem Gambling;

(2) Division means the Charitable Gaming Division of the Department of Revenue;

(3) Problem gambling means maladaptive gambling behavior that disrupts personal, family, or vocational pursuits; and

(4) Program means the Gamblers Assistance Program.

Source: Laws 2013, LB6, § 2.
Operative date May 26, 2013.

9-1003 Nebraska Commission on Problem Gambling; created; members; terms; vacancies; meetings.

(1) The Nebraska Commission on Problem Gambling is created. For administrative purposes only, the commission shall be within the division. The commission shall have nine members appointed by the Governor as provided in this section, subject to confirmation by a majority of the members of the Legislature. The members of the commission shall have no pecuniary interest, either directly or indirectly, in a contract with the program providing services to problem gamblers and shall not be employed by the commission or the Department of Revenue.

(2) By July 1, 2013, the Governor shall appoint members of the commission as follows:

(a) One member with medical care or mental health expertise;

(b) One member with expertise in banking and finance;

(c) One member with legal expertise;

(d) One member with expertise in the field of education;

(e) Two members who are consumers of problem gambling services;

(f) One member with data analysis expertise; and

(g) Two members who are residents of the state and are representative of the public at large.

(3) The terms of the members shall be for three years, except that the Governor shall designate three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2014, three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2015, and three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2016. The Governor shall appoint members to fill vacancies in the same manner as the original appointments, and such appointees shall serve for the remainder of the unexpired term.

(4) Beginning July 1, 2013, the commission shall adopt bylaws governing its operation and the commission shall meet at least four times each calendar year and may meet more often on the call of the chairperson. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the commission. Meetings of the commission are subject to the Open Meetings Act.

Source: Laws 2013, LB6, § 3.
Operative date May 26, 2013.

Cross References

Open Meetings Act, see section 84-1407.

9-1004 Commission; officers; expenses; duties; director; duties; rules and regulations; report.

(1) The commission shall appoint one of its members as chairperson and such other officers as it deems appropriate. Members shall be reimbursed for their actual and necessary expenses in carrying out their duties as members of the commission as provided in sections 81-1174 to 81-1177.

(2) The commission shall develop guidelines and standards for the operation of the program and shall direct the distribution and disbursement of money in the Compulsive Gamblers Assistance Fund.

(3) The commission shall appoint a director of the program, provide for office space and equipment, and support and facilitate the work of the program. The director may hire, terminate, and supervise commission and program staff, shall be responsible for the duties of the office and the administration of the program, and shall electronically provide an annual report to the General Affairs Committee of the Legislature which includes issues and policy concerns that relate to problem gambling in Nebraska. All documents, files, equipment, effects, and records belonging to the State Committee on Problem Gambling on June 30, 2013, shall become the property of the commission on July 1, 2013.

(4) The commission shall (a) provide for a process for the evaluation and approval of provider applications and contracts for treatment and other services funded from the Compulsive Gamblers Assistance Fund and (b) develop standards and guidelines for training and certification of problem gambling counselors.

(5) The commission shall provide for (a) the review and use of evaluation data, (b) the use and expenditure of funds for education regarding problem gambling and prevention of problem gambling, and (c) the creation and implementation of outreach and educational programs regarding problem gambling for Nebraska residents.

(6) The commission may adopt and promulgate rules and regulations and engage in other activities it finds necessary to carry out its duties under sections 9-1001 to 9-1007.

(7) The commission shall submit a report within sixty days after the end of each fiscal year to the Governor and the Clerk of the Legislature that provides details of the administration of the program and distribution of funds from the Compulsive Gamblers Assistance Fund. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2013, LB6, § 4.
Operative date July 1, 2013.

9-1005 Gamblers Assistance Program; created; duties.

The Gamblers Assistance Program is created. The program shall:

(1) Contract with providers of problem gambling treatment services to Nebraska consumers;

(2) Promote public awareness of the existence of problem gambling and the availability of treatment services;

(3) Evaluate the existence and scope of problem gambling in Nebraska and its consequences through means and methods determined by the commission; and

(4) Perform such other duties and provide such other services as the commission determines.

Source: Laws 2013, LB6, § 5.
Operative date July 1, 2013.

9-1006 Compulsive Gamblers Assistance Fund; created; use; investment.

The Compulsive Gamblers Assistance Fund is created. The fund shall include revenue transferred from the State Lottery Operation Trust Fund under section 9-812 and the Charitable Gaming Operations Fund under section 9-1,101 and any other revenue received by the division or commission for credit to the fund from any other public or private source, including, but not limited to, appropriations, grants, donations, gifts, devises, bequests, fees, or reimbursements. The commission shall administer the fund for the operation of the Gamblers Assistance Program. The Director of Administrative Services shall draw warrants upon the Compulsive Gamblers Assistance Fund upon the presentation of proper vouchers by the commission. Money from the Compulsive Gamblers Assistance Fund shall be used exclusively for the purpose of providing assistance to agencies, groups, organizations, and individuals that provide education, assistance, and counseling to individuals and families experiencing difficulty as a result of problem gambling, to promote the awareness of problem gamblers assistance programs, and to pay the costs and expenses of the Gamblers Assistance Program, including travel. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1993, LB 138, § 33; R.S.Supp.,1994, § 9-804.05; Laws 1995, LB 275, § 17; Laws 2000, LB 659, § 3; Laws 2001, LB 541, § 5; R.S.Supp.,2002, § 83-162.04; Laws 2004, LB 1083, § 17; Laws 2005, LB 551, § 7; Laws 2008, LB1058, § 2; Laws 2009, LB189, § 2; R.S.1943, (2009), § 71-817; Laws 2013, LB6, § 6.
Operative date July 1, 2013.

Cross References

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

9-1007 Division of Behavioral Health of Department of Health and Human Services or department; restriction on expenditures; contracts; how treated; Compulsive Gamblers Assistance Fund; use.

(1) Except as otherwise provided in subsection (2) of this section, no person acting on behalf of the Division of Behavioral Health of the Department of Health and Human Services or the department shall make expenditures not required by contract obligations entered into before July 1, 2013, until the Gamblers Assistance Program created in section 9-1005 commences its duties.

(2) Any contract between the State of Nebraska and a provider of problem gambling services in existence on July 1, 2013, shall remain in full force and effect and is binding and effective upon the parties to the contract until the contract is terminated according to its terms or renegotiated by the commission.

(3) The Compulsive Gamblers Assistance Fund shall not be subject to any nonstatutory expenditure limitation from any source and shall be available for expenditure as provided in sections 9-1001 to 9-1006.

Source: Laws 2013, LB6, § 7.
Operative date July 1, 2013.

CHAPTER 11
BONDS AND OATHS, OFFICIAL

Article.
1. Official Bonds and Oaths. 11-105, 11-115.

ARTICLE 1
OFFICIAL BONDS AND OATHS

Section
11-105. Bonds and oaths; filing; time.
11-115. Bonds; failure to furnish; show cause order; effect.

11-105 Bonds and oaths; filing; time.

(1) Official bonds, with the oath endorsed thereon, shall be filed in the proper office within the following time:

(a) Of all officers elected at any general election, following receipt of their election certificate and not later than ten days before the first Thursday after the first Tuesday in January next succeeding the election;

(b) Of all appointed officers, within thirty days after their appointment; and

(c) Of officers elected at any special election and city and village officers, within thirty days after the canvass of the votes of the election at which they were chosen.

(2) The filing of the bond with the oath endorsed thereon does not authorize a person to take any official action prior to the beginning of his or her term of office pursuant to Article XVII, section 5, of the Constitution of Nebraska.

(3) In counties which provide a bond for county officers pursuant to subdivision (22) of section 11-119, such county officers are not required to comply with the timing requirements of subsection (1) of this section with regard to their official bond but shall file their oaths of office in the proper offices prior to the beginning of their terms of office.

Source: Laws 1881, c. 13, § 5, p. 95; R.S.1913, § 5711; C.S.1922, § 5041; C.S.1929, § 12-105; R.S.1943, § 11-105; Laws 1976, LB 534, § 1; Laws 2013, LB311, § 1.
Effective date September 6, 2013.

11-115 Bonds; failure to furnish; show cause order; effect.

If any person elected or appointed to any office neglects to have his or her official bond executed and approved as provided by law and filed for record within the time limited by sections 11-101 to 11-122, the officer with whom the bond is required to be filed shall immediately issue an order to such person to show cause why he or she has failed to properly file such bond and why his or her office should not be declared vacant. If such person properly files the official bond within ten days of the issuance of the show cause order for appointed officials or before the date for taking office for elected officials, such filing shall be deemed to be in compliance with sections 11-101 to 11-122. If

such person does not file the bond within ten days of the issuance of such order for appointed officials or before the date for taking office for elected officials and sufficient cause is not shown within that time, his or her office shall thereupon ipso facto become vacant, and such vacancy shall thereupon immediately be filled by election or appointment as the law may direct in other cases of vacancy in the same office. This section does not apply to county officers covered pursuant to subdivision (22) of section 11-119.

Source: Laws 1881, c. 13, § 15, p. 97; R.S.1913, § 5721; C.S.1922, § 5051; C.S.1929, § 12-115; R.S.1943, § 11-115; Laws 1976, LB 534, § 2; Laws 2013, LB311, § 2.
Effective date September 6, 2013.

CHAPTER 13
CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

ARTICLE 5
BUDGETS

(a) NEBRASKA BUDGET ACT

(a) NEBRASKA BUDGET ACT

13-503 Terms, defined.

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

(1) Governing body means the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, learning community, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, offstreet parking district, transit authority, metropolitan utilities district, Educational Service Unit Coordinating Council, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;

(2) Levying board means any governing body which has the power or duty to levy a tax;

(3) Fiscal year means the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax means any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;

(5) Auditor means the Auditor of Public Accounts;

(6) Cash reserve means funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;

(7) Public funds means all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;

(8) Adopted budget statement means a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;

(9) Special reserve fund means any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, or (f) statutorily authorized sinking funds shall be considered special reserve funds;

(10) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years used by a city or village in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget means a budget by a city of the primary or metropolitan class that adopts a charter provision providing for a biennial period to determine and carry on the city's financial and taxing affairs or a budget by a city of the first or second class or village that provides for a biennial period to determine and carry on the city's or village's financial and taxing affairs.

Source: Laws 1969, c. 145, § 2, p. 669; Laws 1972, LB 537, § 1; Laws 1977, LB 510, § 6; R.S.1943, (1987), § 23-922; Laws 1988, LB 802, § 2; Laws 1992, LB 1063, § 3; Laws 1992, Second Spec. Sess., LB 1, § 3; Laws 1993, LB 734, § 17; Laws 1994, LB 1257, § 3; Laws 1996, LB 299, § 10; Laws 1997, LB 250, § 2; Laws 1999, LB 437, § 25; Laws 2000, LB 968, § 4; Laws 2000, LB 1116, § 6; Laws 2001, LB 142, § 25; Laws 2003, LB 607, § 1; Laws 2006, LB 1024, § 1; Laws 2007, LB603, § 1; Laws 2009, LB392, § 2; Laws 2010, LB779, § 1; Laws 2013, LB111, § 1. Effective date February 16, 2013.

Cross References

Joint Airport Authorities Act, see section 3-716.
Local Option Municipal Economic Development Act, see section 18-2701.
Nebraska County and City Lottery Act, see section 9-601.
Political Subdivisions Self-Funding Benefits Act, see section 13-1601.

13-504 Proposed budget statement; contents; corrections; cash reserve; limitation.

(1) Each governing body shall annually or biennially prepare a proposed budget statement on forms prescribed and furnished by the auditor. The proposed budget statement shall be made available to the public by the political subdivision prior to publication of the notice of the hearing on the proposed budget statement pursuant to section 13-506. A proposed budget statement shall contain the following information, except as provided by state law:

(a) For the immediately preceding fiscal year or biennial period, the revenue from all sources, including motor vehicle taxes, other than revenue received from personal and real property taxation, allocated to the funds and separately stated as to each such source: The unencumbered cash balance at the beginning and end of the year or biennial period; the amount received by taxation of personal and real property; and the amount of actual expenditures;

(b) For the current fiscal year or biennial period, actual and estimated revenue from all sources, including motor vehicle taxes, allocated to the funds and separately stated as to each such source: The actual unencumbered cash balance available at the beginning of the year or biennial period; the amount received from personal and real property taxation; and the amount of actual and estimated expenditures, whichever is applicable. Such statement shall contain the cash reserve for each fiscal year or biennial period and shall note whether or not such reserve is encumbered. Such cash reserve projections shall be based upon the actual experience of prior years or biennial periods. The cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(c) For the immediately ensuing fiscal year or biennial period, an estimate of revenue from all sources, including motor vehicle taxes, other than revenue to be received from taxation of personal and real property, separately stated as to each such source: The actual or estimated unencumbered cash balances, whichever is applicable, to be available at the beginning of the year or biennial period; the amounts proposed to be expended during the year or biennial period; and the amount of cash reserve, based on actual experience of prior years or biennial periods, which cash reserve shall not exceed fifty percent of the total budget adopted exclusive of capital outlay items;

(d) A statement setting out separately the amount sought to be raised from the levy of a tax on the taxable value of real property (i) for the purpose of paying the principal or interest on bonds issued by the governing body and (ii) for all other purposes;

(e) A uniform summary of the proposed budget statement, including each proprietary function fund included in a separate proprietary budget statement prepared pursuant to the Municipal Proprietary Function Act, and a grand total of all funds maintained by the governing body; and

(f) For municipalities, a list of the proprietary functions which are not included in the budget statement. Such proprietary functions shall have a separate budget statement which is approved by the city council or village board as provided in the Municipal Proprietary Function Act.

(2) The actual or estimated unencumbered cash balance required to be included in the budget statement by this section shall include deposits and investments of the political subdivision as well as any funds held by the county

treasurer for the political subdivision and shall be accurately stated on the proposed budget statement.

(3) The political subdivision shall correct any material errors in the budget statement detected by the auditor or by other sources.

Source: Laws 1969, c. 145, § 3, p. 670; Laws 1971, LB 129, § 1; Laws 1984, LB 932, § 3; Laws 1986, LB 889, § 2; Laws 1987, LB 183, § 3; R.S.Supp.,1987, § 23-923; Laws 1989, LB 33, § 6; Laws 1993, LB 310, § 3; Laws 1993, LB 734, § 18; Laws 1994, LB 1310, § 1; Laws 1995, LB 490, § 22; Laws 1996, LB 1362, § 1; Laws 1997, LB 271, § 9; Laws 1999, LB 86, § 3; Laws 2000, LB 968, § 5; Laws 2002, LB 568, § 1; Laws 2013, LB111, § 2. Effective date February 16, 2013.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

13-505 Proposed budget statement; estimated expenditures; unencumbered balances; estimated income.

The estimated expenditures plus the required cash reserve for the ensuing fiscal year or biennial period less all estimated and actual unencumbered balances at the beginning of the year or biennial period and less the estimated income from all sources, including motor vehicle taxes, other than taxation of personal and real property shall equal the amount to be received from taxes, and such amount shall be shown on the proposed budget statement pursuant to section 13-504. The amount to be raised from taxation of personal and real property, as determined above, plus the estimated revenue from other sources, including motor vehicle taxes, and the unencumbered balances shall equal the estimated expenditures, plus the necessary required cash reserve, for the ensuing year or biennial period.

Source: Laws 1969, c. 145, § 4, p. 671; R.S.1943, (1983), § 23-924; Laws 1993, LB 310, § 4; Laws 1997, LB 271, § 10; Laws 2002, LB 568, § 2; Laws 2013, LB111, § 3.
Effective date February 16, 2013.

13-506 Proposed budget statement; notice; hearing; adoption; certify to board; exceptions; file with auditor.

(1) Each governing body shall each year or biennial period conduct a public hearing on its proposed budget statement. Notice of place and time of such hearing, together with a summary of the proposed budget statement, shall be published at least five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction. When the total operating budget, not including reserves, does not exceed ten thousand dollars per year or twenty thousand dollars per biennial period, the proposed budget summary may be posted at the governing body's principal headquarters. After such hearing, the proposed budget statement shall be adopted, or amended and adopted as amended, and a written record shall be kept of such hearing. The amount to be received from personal and real property taxation shall be certified to the levying board after the proposed budget statement is adopted or is amended and adopted as amended. If the levying board represents more than one county, a member or a representative of the governing board shall, upon the written request of any represented county, appear and present its budget at

the hearing of the requesting county. The certification of the amount to be received from personal and real property taxation shall specify separately (a) the amount to be applied to the payment of principal or interest on bonds issued by the governing body and (b) the amount to be received for all other purposes. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within twenty days after its adoption in the manner provided in this section, but without provision for hearing, setting forth the items changed and the reasons for such changes.

(2) Upon approval by the governing body, the budget shall be filed with the auditor. The auditor may review the budget for errors in mathematics, improper accounting, and noncompliance with the Nebraska Budget Act or sections 13-518 to 13-522. If the auditor detects such errors, he or she shall immediately notify the governing body of such errors. The governing body shall correct any such error as provided in section 13-511. Warrants for the payment of expenditures provided in the budget adopted under this section shall be valid notwithstanding any errors or noncompliance for which the auditor has notified the governing body.

Source: Laws 1969, c. 145, § 5, p. 672; Laws 1971, LB 129, § 2; Laws 1973, LB 95, § 1; R.S.1943, (1983), § 23-925; Laws 1993, LB 310, § 5; Laws 1996, LB 1362, § 2; Laws 1997, LB 271, § 11; Laws 1999, LB 86, § 4; Laws 2002, LB 568, § 3; Laws 2013, LB111, § 4.
Effective date February 16, 2013.

13-508 Adopted budget statement; certified taxable valuation; levy.

(1) After publication and hearing thereon and within the time prescribed by law, each governing body, except as provided in subsection (3) of this section, shall file with and certify to the levying board or boards on or before September 20 of each year or September 20 of the final year of a biennial period and file with the auditor a copy of the adopted budget statement which complies with sections 13-518 to 13-522 or 79-1023 to 79-1030, together with the amount of the tax required to fund the adopted budget, setting out separately (a) the amount to be levied for the payment of principal or interest on bonds issued by the governing body and (b) the amount to be levied for all other purposes. Proof of publication shall be attached to the statements. Learning communities shall also file a copy of such adopted budget statement with member school districts on or before September 1 of each year. The governing body, in certifying the amount required, may make allowance for delinquent taxes not exceeding five percent of the amount required plus the actual percentage of delinquent taxes for the preceding tax year or biennial period and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year or biennial period which is still pending. Except for such allowances, a governing body shall not certify an amount of tax more than one percent greater or lesser than the amount determined under section 13-505.

(2) Each governing body shall use the certified taxable values as provided by the county assessor pursuant to section 13-509 for the current year in setting or certifying the levy. Each governing body may designate one of its members to perform any duty or responsibility required of such body by this section.

(3)(a) A Class I school district shall do the filing and certification required by subsection (1) of this section on or before August 1 of each year.

(b) A learning community shall do such filing and certification on or before September 1 of each year.

Source: Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983), § 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310, § 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4; Laws 2006, LB 1024, § 2; Laws 2008, LB1154, § 1; Laws 2009, LB166, § 1; Laws 2013, LB111, § 5. Effective date February 16, 2013.

13-509.01 Cash balance; expenditure authorized; limitation.

On and after the first day of its fiscal year in 1993 and of each succeeding year or on or after the first day of its biennial period and until the adoption of the budget by a governing body in September, the governing body may expend any balance of cash on hand for the current expenses of the political subdivision governed by the governing body. Except as provided in section 13-509.02, such expenditures shall not exceed an amount equivalent to the total amount expended under the last budget in the equivalent period of the prior budget year or biennial period. Such expenditures shall be charged against the appropriations for each individual fund or purpose as provided in the budget when adopted.

Source: Laws 1993, LB 734, § 21; Laws 1994, LB 1257, § 4; Laws 2013, LB111, § 6.
Effective date February 16, 2013.

13-513 Auditor; request information.

The auditor shall, on or before December 1 each year, request information from each governing body in a form prescribed by the auditor regarding (1) trade names, corporate names, or other business names under which the governing body operates and (2) agreements to which the governing body is a party under the Interlocal Cooperation Act and the Joint Public Agency Act. Each governing body shall provide such information to the auditor on or before December 31.

Source: Laws 2004, LB 939, § 2; Laws 2013, LB192, § 1.
Effective date September 6, 2013.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

ARTICLE 12

NEBRASKA PUBLIC TRANSPORTATION ACT

Section
13-1205. Department of Roads; powers, duties, and responsibilities; enumerated.

13-1205 Department of Roads; powers, duties, and responsibilities; enumerated.

The department shall have the following powers, duties, and responsibilities:

(1) To collect and maintain data on the level of public transportation services and needs in the state and identify areas not being adequately served by existing public or private transportation services;

(2) To assess the regional and statewide effect of changes, improvement, and route abandonments in the state's public transportation system;

(3) To develop a six-year statewide transit plan and programs for public transportation in coordination with local plans and programs developed by municipalities, counties, and transit authorities;

(4) To provide planning and technical assistance to agencies of the state, political subdivisions, or groups seeking to improve public transportation;

(5) To advise, consult, and cooperate with agencies of the state, the federal government, and other states, interstate agencies, political subdivisions, and groups concerned with public transportation;

(6) To cooperate with the Public Service Commission by providing periodic assessments to the commission when determining the effect of proposed regulatory decisions on public transportation;

(7) To administer federal and state programs providing financial assistance to public transportation, except those federal and state programs in which a municipality, county, transit authority, or other state agency is designated as the administrator; and

(8) To exercise all other powers necessary and proper for the discharge of its duties, including the adoption and promulgation of reasonable rules and regulations to carry out the act.

Source: Laws 1975, LB 443, § 9; Laws 1979, LB 322, § 4; Laws 1981, LB 545, § 4; Laws 1981, LB 144, § 4; R.S.1943, (1983), § 19-3905; Laws 1993, LB 158, § 4; Laws 2012, LB782, § 16; Laws 2013, LB222, § 3.
Effective date May 8, 2013.

ARTICLE 21

ENTERPRISE ZONES

Section
13-2101.01. Act, how cited.
13-2114. Repealed. Laws 2013, LB 222, § 48.

13-2101.01 Act, how cited.

Sections 13-2101 to 13-2112 shall be known and may be cited as the Enterprise Zone Act.

Source: Laws 1993, LB 725, § 1; Laws 2013, LB222, § 4.
Effective date May 8, 2013.

13-2114 Repealed. Laws 2013, LB 222, § 48.

ARTICLE 27

CIVIC AND COMMUNITY CENTER FINANCING ACT

Section
13-2701. Act, how cited.
13-2702. Purpose of act.
13-2703. Terms, defined.
13-2704. Civic and Community Center Financing Fund; created; use; investment.
13-2704.01. Grants of assistance; purposes; applications; evaluation.
13-2704.02. Grants of assistance; engineering and technical studies.
13-2705. Conditional grant approval; limits.
13-2707. Department; evaluation criteria; match required; location.
13-2707.01. Grant; engineering and technical studies; evaluation criteria.
13-2709. Information on grants; department; duties.

13-2701 Act, how cited.

Sections 13-2701 to 13-2710 shall be known and may be cited as the Civic and Community Center Financing Act.

Source: Laws 1999, LB 382, § 13; Laws 2011, LB297, § 2; Laws 2013, LB153, § 1.
Effective date September 6, 2013.

13-2702 Purpose of act.

The purpose of the Civic and Community Center Financing Act is to support the development of civic, community, and recreation centers throughout Nebraska. Furthermore, the act is intended to support projects that foster maintenance or growth of communities.

Source: Laws 1999, LB 382, § 14; Laws 2011, LB297, § 3; Laws 2013, LB153, § 2.
Effective date September 6, 2013.

13-2703 Terms, defined.

For purposes of the Civic and Community Center Financing Act:

(1) Civic center means a facility that is primarily used to host conventions, meetings, and cultural events and a library;

(2) Community center means the traditional center of a community, typically comprised of a cohesive core of residential, civic, religious, and commercial buildings, arranged around a main street and intersecting streets;

(3) Department means the Department of Economic Development;

(4) Fund means the Civic and Community Center Financing Fund;

(5) Historic building means a building eligible for listing on or currently listed on the National Register of Historic Places; and

(6) Recreation center means a facility used for athletics, fitness, sport activities, or recreation that is owned by a municipality and is available for use by the general public with or without charge. Recreation center does not include

any facility that requires a person to purchase a membership to utilize such facility.

Source: Laws 1999, LB 382, § 15; Laws 2011, LB297, § 4; Laws 2013, LB153, § 3.
Effective date September 6, 2013.

13-2704 Civic and Community Center Financing Fund; created; use; investment.

(1) The Civic and Community Center Financing Fund is created. The fund shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Transfers may be made from the fund to the General Fund, the Department of Revenue Enforcement Fund, and the State Colleges Sport Facilities Cash Fund at the direction of the Legislature.

(2)(a) The department shall use the Civic and Community Center Financing Fund for the following purposes:

(i) For grants of assistance as described in section 13-2704.01;

(ii) For grants of assistance as described in section 13-2704.02; and

(iii) For reasonable and necessary costs of the department directly related to the administration of the fund, not to exceed the amount needed to employ a one-half full-time equivalent employee.

(b) The fund may not be used for programming, marketing, advertising, or facility-staffing activities.

(3) The State Treasurer shall transfer two hundred fifty thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund on October 1 of 2012, 2013, and 2014. Commencing October 1, 2015, and every year thereafter, the State Treasurer shall transfer four hundred thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund.

Source: Laws 1999, LB 382, § 16; Laws 2009, First Spec. Sess., LB3, § 8; Laws 2010, LB779, § 5; Laws 2011, LB297, § 5; Laws 2012, LB969, § 4; Laws 2013, LB153, § 4.
Effective date September 6, 2013.

Cross References

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

13-2704.01 Grants of assistance; purposes; applications; evaluation.

(1) The department shall use the fund to provide grants of assistance for the following purposes:

(a) To assist in the construction of new civic centers and recreation centers or the renovation or expansion of existing civic centers and recreation centers;

(b) To assist in the conversion, rehabilitation, or reuse of historic buildings; or

(c) To upgrade community centers, including the demolition of substandard and abandoned buildings.

(2) Applications for grants of assistance pursuant to this section shall be evaluated by the department pursuant to section 13-2707.

Source: Laws 2013, LB153, § 5.
Effective date September 6, 2013.

13-2704.02 Grants of assistance; engineering and technical studies.

(1) The department shall use the fund to provide grants of assistance for engineering and technical studies directly related to projects described in section 13-2704.01.

(2) Applications for grants of assistance pursuant to this section shall be evaluated by the department pursuant to section 13-2707.01.

Source: Laws 2013, LB153, § 6.
Effective date September 6, 2013.

13-2705 Conditional grant approval; limits.

The department may conditionally approve grants of assistance from the fund to eligible and competitive applicants within the following limits:

(1) Except as provided in subdivision (2) of this section, a grant request shall be in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least ten thousand dollars but no more than:

(i) For a city of the primary class, one million five hundred thousand dollars;

(ii) For a municipality with a population of forty thousand but less than one hundred thousand, seven hundred fifty thousand dollars;

(iii) For a municipality with a population of twenty thousand but less than forty thousand, five hundred thousand dollars;

(iv) For a municipality with a population of ten thousand but less than twenty thousand, four hundred thousand dollars; and

(v) For a municipality with a population of less than ten thousand, two hundred fifty thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least two thousand dollars but no more than ten thousand dollars;

(2) Upon the balance of the fund reaching two million five hundred thousand dollars, and until the balance of the fund falls below one million dollars, a grant request shall be in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least ten thousand dollars but no more than:

(i) For a city of the primary class, two million two hundred fifty thousand dollars;

(ii) For a municipality with a population of forty thousand but less than one hundred thousand, one million one hundred twenty-five thousand dollars;

(iii) For a municipality with a population of twenty thousand but less than forty thousand, seven hundred fifty thousand dollars;

(iv) For a municipality with a population of ten thousand but less than twenty thousand, six hundred thousand dollars; and

(v) For a municipality with a population of less than ten thousand, three hundred seventy-five thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least two thousand dollars but no more than ten thousand dollars;

(3) Assistance from the fund shall not amount to more than fifty percent of the cost of the project for which a grant is requested; and

(4) A municipality shall not be awarded more than one grant of assistance under section 13-2704.01 and one grant of assistance under section 13-2704.02 in any five-year period.

Source: Laws 1999, LB 382, § 17; Laws 2003, LB 385, § 1; Laws 2010, LB789, § 1; Laws 2011, LB297, § 6; Laws 2013, LB153, § 7. Effective date September 6, 2013.

13-2707 Department; evaluation criteria; match required; location.

(1) The department shall evaluate all applications for grants of assistance under section 13-2704.01 based on the following criteria, which are listed in no particular order of preference:

(a) Retention Impact. Funding decisions by the department shall be based on the likelihood of the project retaining existing residents in the community where the project is located, developing, sustaining, and fostering community connections, and enhancing the potential for economic growth in a manner that will sustain the quality of life and promote long-term economic development;

(b) New Resident Impact. Funding decisions by the department shall be based on the likelihood of the project attracting new residents to the community where the project is located;

(c) Visitor Impact. Funding decisions by the department shall be based on the likelihood of the project enhancing or creating an attraction that would increase the potential of visitors to the community where the project is located from inside and outside the state;

(d) Readiness. The applicant's fiscal and economic capacity to finance the local share and ability to proceed and implement its plan and operate the civic center, community center, or recreation center; and

(e) Project Planning. Projects with completed technical assistance and feasibility studies shall be preferred to those with no prior planning.

(2) Any grant of assistance under section 13-2704.01 shall be matched at least equally from local sources. At least fifty percent of the local match must be in cash.

(3) To receive a grant of assistance under section 13-2704.01, the project for which the grant is requested shall be located in the municipality that applies for the grant.

Source: Laws 1999, LB 382, § 19; Laws 2003, LB 385, § 3; Laws 2011, LB297, § 7; Laws 2013, LB153, § 8.
Effective date September 6, 2013.

13-2707.01 Grant; engineering and technical studies; evaluation criteria.

The department shall evaluate all applications for grants of assistance under section 13-2704.02 based on the following criteria:

(1) Financial Support. Assistance from the fund shall be matched at least equally from local sources. At least fifty percent of the local match must be in cash. Projects with a higher level of local matching funds shall be preferred as compared to those with a lower level of matching funds; and

(2) Project Location. Assistance from the fund shall be for engineering and technical studies related to projects that will be located in the municipality that applies for the grant.

Source: Laws 2013, LB153, § 9.
Effective date September 6, 2013.

13-2709 Information on grants; department; duties.

The department shall submit, as part of the department's annual status report under section 81-1201.11, the following information regarding the Civic and Community Center Financing Act:

(1) Information documenting the grants conditionally approved for funding by the Legislature in the following fiscal year;

(2) Reasons why a full application was not sent to any municipality seeking assistance under the act;

(3) The amount of sales tax revenue generated for the fund pursuant to subsection (4) of section 13-2610 and subsection (6) of section 13-3108, the total amount of grants applied for under the act, the year-end fund balance, and, if all available funds have not been committed to funding grants under the act, an explanation of the reasons why all such funds have not been so committed;

(4) The amount of appropriated funds actually expended by the department for the year;

(5) The department's current budget for administration of the act and the department's planned use and distribution of funds, including details on the amount of funds to be expended on grants and the amount of funds to be expended by the department for administrative purposes; and

(6) Grant summaries, including the applicant municipality, project description, grant amount requested, amount and type of matching funds, and reasons for approval or denial based on evaluation criteria from section 13-2707 or 13-2707.01 for every application seeking assistance under the act.

Source: Laws 1999, LB 382, § 21; Laws 2011, LB404, § 2; Laws 2013, LB153, § 10.
Effective date September 6, 2013.

CHAPTER 14
CITIES OF THE METROPOLITAN CLASS

ARTICLE 21
PUBLIC UTILITIES

14-2109 Utilities district; personnel; duties; salary.

The board of directors of a metropolitan utilities district shall at its first regular meeting appoint an individual with an official title designated by the board who shall (1) act as secretary of such board, (2) have general supervision of the management, construction, operation, and maintenance of the utility plants and property under the jurisdiction of or owned by such metropolitan utilities district, subject to the direction of the board, (3) hold office at the pleasure of the board, (4) possess business training, executive experience, and knowledge of the development and operation of public utilities, (5) receive such compensation as the board may determine, and (6) devote his or her exclusive time to the duties of the office. The board of directors may employ or authorize the employment of such other employees and assistants as may be deemed necessary for the operation and maintenance of the utility plants under its jurisdiction and of the conduct of the affairs of the board and provide for their compensation. The compensation of the appointed individual and such employees shall be paid from funds under control of the board. In no event shall the compensation, as a salary or otherwise, of any employee or officer exceed ten thousand dollars per annum unless approved by a vote of two-thirds or more of the members of the board of directors. The record of such vote of approval, together with the names of the directors so voting, shall be made a part of the permanent records of the board.

Source: Laws 1913, c. 143, § 13, p. 356; R.S.1913, § 4255; Laws 1919, c. 33, § 2, p. 108; C.S.1922, § 3758; Laws 1923, c. 134, § 1, p. 329; C.S.1929, § 14-1014; R.S.1943, § 14-1020; Laws 1947, c. 20, § 3, p. 108; R.S.1943, (1983), § 14-1020; R.S.1943, (1991), § 14-1101.01; Laws 1992, LB 746, § 9; Laws 2001, LB 177, § 2; Laws 2007, LB207, § 1; Laws 2013, LB208, § 1.
Effective date September 6, 2013.

14-2110 Utilities district; employees; removal.

No regular appointee or employee of the metropolitan utilities district, except the individual appointed in section 14-2109, who has been in its service consecutively for more than one year shall be subject to removal except upon a two-thirds vote of the full board and then only for cause which shall be stated in

writing and filed with the secretary of the board at least ten days prior to a hearing preceding such removal.

Source: Laws 1913, c. 143, § 14, p. 356; R.S.1913, § 4256; Laws 1919, c. 33, § 3, p. 108; C.S.1922, § 3759; C.S.1929, § 14-1015; Laws 1941, c. 20, § 1, p. 110; C.S.Supp.,1941, § 14-1015; Laws 1943, c. 38, § 1(1), p. 180; R.S.1943, § 14-1021; R.S.1943, (1991), § 14-1021; Laws 1992, LB 746, § 10; Laws 2007, LB207, § 2; Laws 2013, LB208, § 2.
Effective date September 6, 2013.

14-2126 Utilities district; hydrants; location; maintenance.

The metropolitan utilities districts shall maintain free of charge the number of hydrants heretofore established for fire protection in the streets of the municipalities constituting such districts and, in addition thereto, maintain regular fire hydrants on service mains in the streets of the municipalities not now equipped therewith and also upon service mains that may hereafter be installed in such municipalities. The board of directors may adopt such rules for the placement and maintenance of such hydrants as long as such rules do not violate any rules and regulations adopted and promulgated by the Department of Health and Human Services. Intermediate hydrants or fire hydrants placed between regular hydrants shall be installed by the district at such points as may be designated and ordered by any one of the municipalities. One-half of the cost of such intermediate hydrants, connections, and installation shall be borne by the municipality ordering the same. The district shall also lower water mains and reset hydrants at their original locations whenever necessary.

Source: Laws 1913, c. 143, § 15, p. 357; R.S.1913, § 4257; Laws 1919, c. 33, § 4, p. 109; C.S.1922, § 3760; C.S.1929, § 14-1016; Laws 1943, c. 42, § 1, p. 186; R.S.1943, § 14-1023; R.S.1943, (1991), § 14-1023; Laws 1992, LB 746, § 26; Laws 2013, LB208, § 3.
Effective date September 6, 2013.

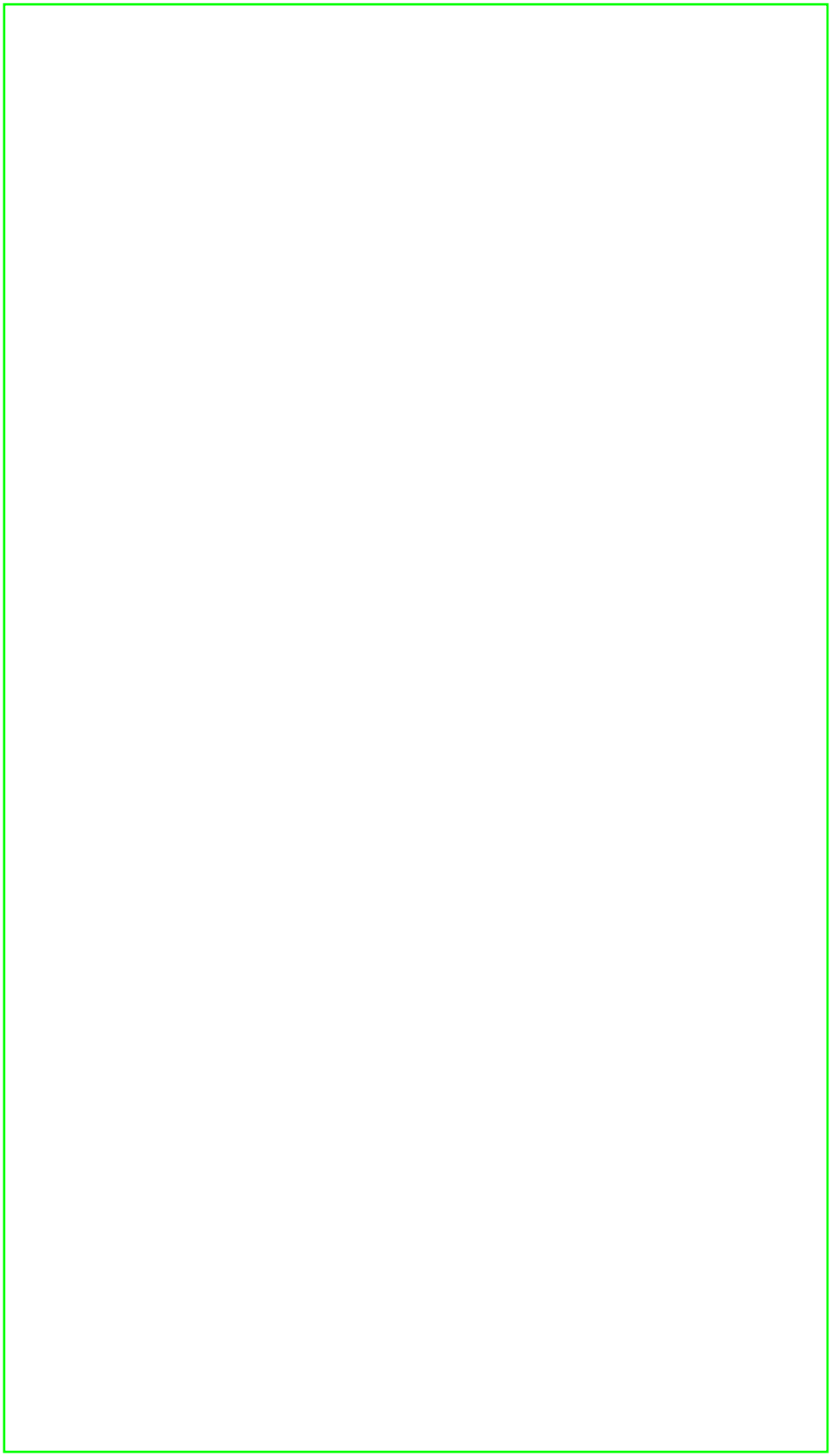
CHAPTER 15
CITIES OF THE PRIMARY CLASS

ARTICLE 9
CITY PLANNING, ZONING

15-905 Building regulations; zoning; distance from city authorized; powers granted.

Every city of the primary class may regulate in the area which is within the corporate limits of the city or within three miles of the corporate limits of the city and outside of any organized city or village, except as to construction on farms for farm purposes, (1) the minimum standards of construction of buildings, dwellings, and other structures in order to provide safe and sound condition thereof for the preservation of health, safety, security, and general welfare, which standards may include regulations as to electric wiring, heating, plumbing, pipefitting, sewer connections, ventilation, size of habitable rooms, and the method of constructing buildings, dwellings, and other structures, and to provide for inspection thereof, and building permits and fees therefor, (2) the removal and tearing down of buildings, dwellings, and other structures in such areas which constitute nuisances because of the dilapidated, unsafe, or run-down condition or conditions, and (3) except as to the United States of America, the State of Nebraska, a county, or a village, in the area outside of the corporate limits of the city of the primary class, the nature, kind, and manner of constructing streets, alleys, sidewalks, curbing or abridging curbs, driveway approaches constructed on or to public right-of-way, and sewage disposal facilities.

Source: Laws 1963, c. 57, § 3, p. 240; Laws 1965, c. 40, § 2, p. 233; Laws 2013, LB88, § 1.
Effective date September 6, 2013.



CHAPTER 16
CITIES OF THE FIRST CLASS

Article.
2. General Powers. 16-230.
3. Officers, Elections, Employees. 16-317, 16-318
10. Retirement Systems.
(a) Police Officers Retirement Act. 16-1011.

ARTICLE 2
GENERAL POWERS

Section
16-230. Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action.

16-230 Drainage; nuisance; weeds; litter; removal; notice; action by city council; hearing; violation; penalty; civil action.

(1) A city of the first class by ordinance may require lots or pieces of ground within the city or within the city's extraterritorial zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. The city may require the owner or occupant of all lots and pieces of ground within the city to keep the lots and pieces of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city.

(2) Any city of the first class may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city shall establish by ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the

nuisance, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;

(b) Weeds includes, but is not limited to, bindweed (Convolvulus arvensis), puncture vine (Tribulus terrestris), leafy spurge (Euphorbia esula), Canada thistle (Cirsium arvense), perennial peppergrass (Lepidium draba), Russian knapweed (Centaurea picris), Johnson grass (Sorghum halepense), nodding or musk thistle, quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), horse nettle (Solanum carolinense), bull thistle (Cirsium lanceolatum), buckthorn (Rhamnus sp.) (tourn), hemp plant (Cannabis sativa), and ragweed (Ambrosiaceae); and

(c) Weeds, grasses, and worthless vegetation does not include vegetation applied or grown on a lot or piece of ground outside the corporate limits of the city but inside the city's extraterritorial zoning jurisdiction expressly for the purpose of weed or erosion control.

Source: Laws 1901, c. 18, § 48, XXXVII, p. 255; R.S.1913, § 4846; Laws 1915, c. 84, § 1, p. 222; C.S.1922, § 4014; C.S.1929, § 16-231; R.S.1943, § 16-230; Laws 1975, LB 117, § 1; Laws 1988, LB 934, § 2; Laws 1991, LB 330, § 1; Laws 1995, LB 42, § 2; Laws 2004, LB 997, § 1; Laws 2009, LB495, § 5; Laws 2013, LB643, § 1.
Effective date September 6, 2013.

ARTICLE 3

OFFICERS, ELECTIONS, EMPLOYEES

Section
16-317. City clerk; duties.
16-318. City treasurer; bond or insurance; premium; duties; reports.

16-317 City clerk; duties.

The city clerk shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the council. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the city clerk may transfer such journal of the proceedings of the council to the State Archives of the Nebraska State Historical Society for

permanent preservation. He or she shall also perform such other duties as may be required by the ordinances of the city.

Source: Laws 1901, c. 18, § 25, p. 236; R.S.1913, § 4883; C.S.1922, § 4051; C.S.1929, § 16-313; R.S.1943, § 16-317; Laws 1973, LB 224, § 4; Laws 2013, LB112, § 1.
Effective date September 6, 2013.

Cross References

Records Management Act, see section 84-1220.

16-318 City treasurer; bond or insurance; premium; duties; reports.

(1) The treasurer shall be required to give bond or evidence of equivalent insurance of not less than twenty-five thousand dollars, or he or she may be required to give bond in double the sum of money estimated by the city council at any time to be in his or her hands belonging to the city. The treasurer shall be the custodian of all money belonging to the corporation. The city council shall pay the actual premium of the bond or insurance coverage of such treasurer.

(2) The treasurer shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying date of payment and on what account paid. He or she shall also file copies of such receipts, except tax receipts, with his or her monthly reports, and he or she shall at the end of every month, and as often as may be requested, render an account to the city council, under oath, showing the state of the treasury at the date of such account, the amount of money remaining in each fund and the amount paid therefrom, and the balance of money in the treasury. The treasurer shall also accompany such account with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with all vouchers held by him or her, shall be filed with his or her account in the clerk's office. He or she shall produce and show all funds shown by such report to be on hand, or satisfy the council or its committee that he or she has such funds in his or her custody or under his or her control. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the council, the mayor with the consent of the council may consider this failure as cause to remove the treasurer from office.

(3) The treasurer shall keep a record of all outstanding bonds against the city, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant to section 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

(4) The treasurer may employ and appoint a delinquent tax collector, who shall be allowed a percentage upon his or her collections to be fixed by the council, not to exceed the fees allowed by law to the county treasurer for like services. Upon taxes collected by such delinquent tax collector, the treasurer shall receive no fees.

(5) The treasurer shall prepare all special assessment lists and shall collect all special assessments.

Source: Laws 1901, c. 18, § 26, p. 236; Laws 1909, c. 19, § 1, p. 181; R.S.1913, § 4884; C.S.1922, § 4052; C.S.1929, § 16-314; R.S.

1943, § 16-318; Laws 1969, c. 77, § 1, p. 405; Laws 2005, LB 528, § 1; Laws 2007, LB347, § 10; Laws 2013, LB112, § 2. Effective date September 6, 2013.

ARTICLE 10

RETIREMENT SYSTEMS

(a) POLICE OFFICERS RETIREMENT ACT

(a) POLICE OFFICERS RETIREMENT ACT

16-1011 Police officer; disability in the line of duty; benefit; requirements.

(1) If any police officer becomes disabled, such police officer shall be placed upon the roll of pensioned police officers at the regular retirement pension of fifty percent of regular pay for the period of such disability. For purposes of this section, disability shall mean the complete inability of the police officer, for reasons of accident or other cause while in the line of duty, to perform the duties of a police officer.

(2) No disability benefit payment shall be made except upon adequate proof furnished to the city, such proof to consist of a medical examination conducted by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state and who certifies to the city that the police officer is unable to perform the duties of a police officer. The city, during the first three years of the payment of such benefits, shall have the right, at reasonable times, to require the disabled police officer to undergo a medical examination at the city's expense to determine the continuance of the disability claimed. After such three-year period, the city may request the district court to order the police officer to submit proof of the continuance of the disability claimed if the city has reasonable grounds to believe the police officer is fraudulently receiving disability payments. The city shall have the right to demand a physical examination of the police officer by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state, and who is chosen by the city. The expense of such examination shall be borne by the city.

(3) In case of temporary disability of a police officer received while in the line of duty, he or she shall receive his or her salary during the continuance of such disability for a period not to exceed twelve months, except that if it is ascertained by the city council or other proper municipal authorities within twelve months that such temporary disability has become a disability as defined in this section, then the salary shall cease and he or she shall be entitled to the benefits for pensions in case of disability as provided in this section.

(4) All payments of pension or salary provided by this section shall be subject to deduction of amounts paid under the Nebraska Workers' Compensation Act. In case of a permanent disability of a police officer, such payments shall not commence until all credit for unused annual or sick leave and other similar credits have been fully utilized by the disabled police officer if there will be no impairment to his or her salary during the period of disability. Total payments to a disabled police officer, in excess of amounts paid as workers' compensation benefits, shall not be less than the retirement value at the date of disability. If

the actuarial equivalent of the disability pension payable under this section exceeds the police officer's retirement value at the time of the first payment, the city shall contribute such additional amounts as may be necessary, from time to time, to provide for the required disability pension.

(5) If a police officer who was pensioned under this section is later determined to be no longer disabled, the pension provided for under this section shall terminate and the police officer's vested retirement value, as reduced by any disability payments made from the retirement system, shall thereafter be held and administered in the same manner as for any nondisabled police officer or former police officer.

(6) If a police officer who has pensioned under this section is later determined to be no longer disabled during the first three years when disability benefit payments are being paid the police officer may return to duty with the police force under the following conditions:

(a) If a vacancy exists on the police force for which the police officer is qualified and the police officer wishes to return to the police force, the city shall hire the police officer to fill the vacancy at a pay grade of not less than his or her previous pay grade; or

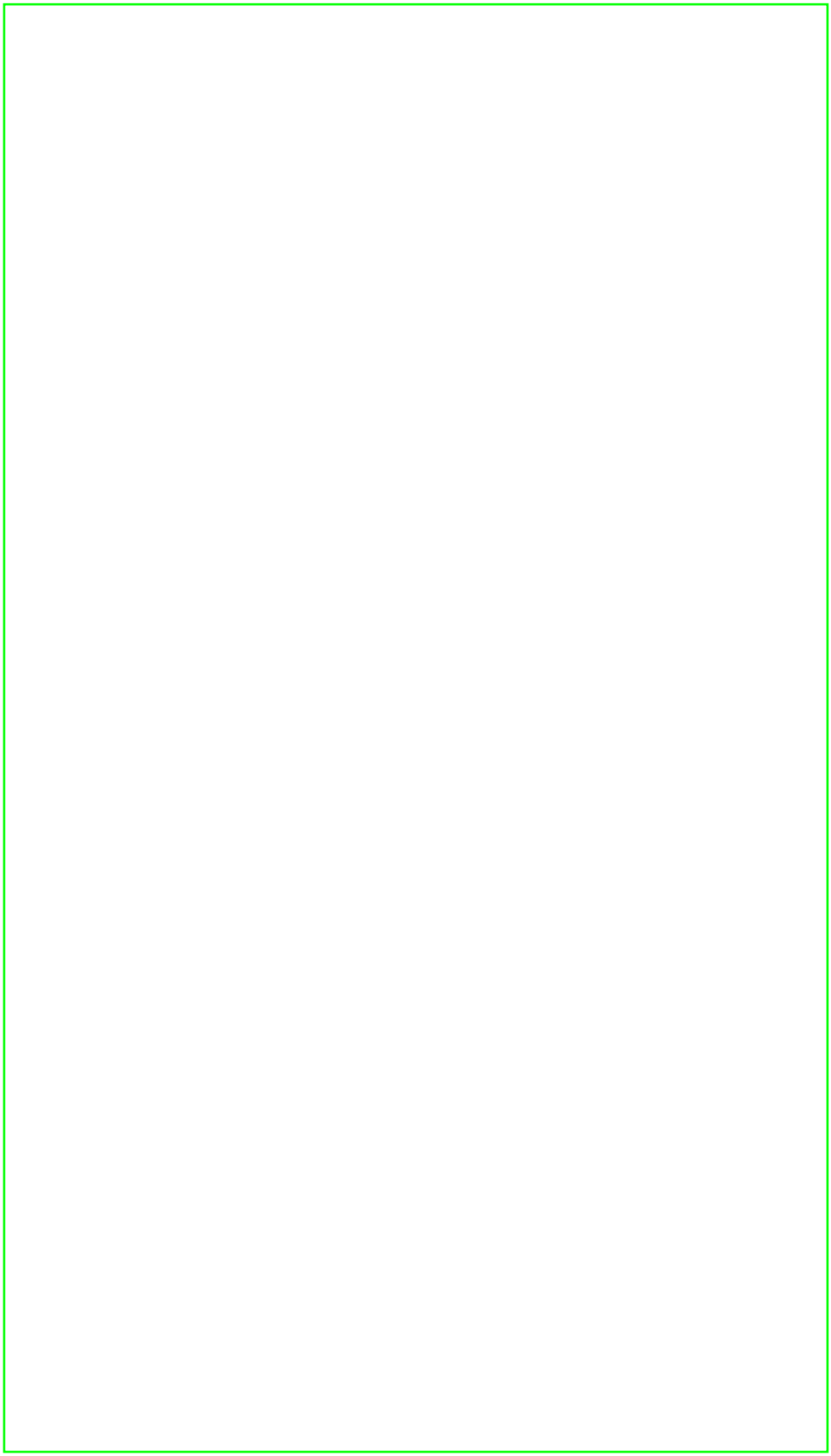
(b) If no vacancy exists on the police force and the police officer wishes to return to the police force, the city may create a vacancy under the city's reduction in force policy adopted under the Civil Service Act and rehire the officer at a pay grade of not less than his or her previous pay grade.

The provisions of this subsection shall not apply to a police officer whose disability benefit payments are terminated because of fraud on the part of the police officer.

Source: Laws 1983, LB 237, § 11; Laws 1986, LB 811, § 4; Laws 1992, LB 672, § 15; Laws 2013, LB263, § 1.
Effective date April 25, 2013.

Cross References

Civil Service Act, see section 19-1825.
Nebraska Workers' Compensation Act, see section 48-1,110.



CHAPTER 17
CITIES OF THE SECOND CLASS AND VILLAGES

Article.
1. Laws Applicable Only to Cities of the Second Class. 17-110.
5. General Grant of Power. 17-563.
6. Elections, Officers, Ordinances.
(b) Officers. 17-605, 17-606.
(c) Ordinances. 17-614.

ARTICLE 1
LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section
17-110. Mayor; general duties and powers.

17-110 Mayor; general duties and powers.

The mayor shall preside at all meetings of the city council of a city of the second class. The mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the city council on any pending matter, legislation, or transaction, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council. He or she shall have superintendence and control of all the officers and affairs of the city and shall take care that the ordinances of the city and all laws governing cities of the second class are complied with.

Source: Laws 1879, § 10, p. 195; R.S.1913, § 5002; C.S.1922, § 4171; C.S.1929, § 17-110; R.S.1943, § 17-110; Laws 1957, c. 55, § 3, p. 266; Laws 1975, LB 172, § 3; Laws 1980, LB 662, § 4; Laws 2013, LB113, § 1.
Effective date September 6, 2013.

ARTICLE 5
GENERAL GRANT OF POWER

Section
17-563. Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; assessment of cost; violation; penalty; civil action.

17-563 Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; hearing; assessment of cost; violation; penalty; civil action.

(1) A city of the second class and village by ordinance (a) may require lots or pieces of ground within the city or village to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon, (b) may require the owner or occupant of any lot or piece of ground within the city or village to keep the lot or piece of ground and the adjoining streets and alleys free of excessive growth of weeds, grasses, or worthless vegetation, and (c) may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village.

(2) Any city of the second class and village may by ordinance declare it to be a nuisance to permit or maintain excessive growth of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles. The city or village shall establish by ordinance the height at which weeds, grasses, or worthless vegetation are a nuisance.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any. The city or village shall establish the method of notice by ordinance. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Within five days after receipt of such notice, the owner or occupant of the lot or piece of ground may request a hearing with the city or village to appeal the decision to abate or remove a nuisance by filing a written appeal with the office of the city or village clerk. A hearing on the appeal shall be held within fourteen days after the filing of the appeal and shall be conducted by an elected or appointed officer as designated in the ordinance. The hearing officer shall render a decision on the appeal within five business days after the conclusion of the hearing. If the appeal fails, the city or village may have such work done. Within five days after receipt of such notice, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or village or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city or village may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(b) Weeds includes, but is not limited to, bindweed (Convolvulus arvensis), puncture vine (Tribulus terrestris), leafy spurge (Euphorbia esula), Canada thistle (Cirsium arvense), perennial peppergrass (Lepidium draba), Russian knapweed (Centaurea picris), Johnson grass (Sorghum halepense), nodding or musk thistle, quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), horse nettle (Solanum carolinense), bull thistle (Cirsium lanceolatum), buckthorn (Rhamnus sp.) (tourn), hemp plant (Cannabis sativa), and ragweed (Ambrosiaceae).

Source: Laws 1879, § 71, p. 219; R.S.1913, § 5137; C.S.1922, § 4312; C.S.1929, § 17-503; R.S.1943, § 17-563; Laws 1991, LB 330,

§ 2; Laws 1995, LB 42, § 3; Laws 2004, LB 997, § 2; Laws 2009, LB495, § 8; Laws 2013, LB643, § 2.
Effective date September 6, 2013.

ARTICLE 6

ELECTIONS, OFFICERS, ORDINANCES

(b) OFFICERS

(b) OFFICERS

17-605 Clerk; duties.

The city or village clerk shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the council or board of trustees. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the city or village clerk may transfer such journal of the proceedings of the council or board of trustees to the State Archives of the Nebraska State Historical Society for permanent preservation. He or she shall also perform such other duties as may be required by the ordinances of the city.

Source: Laws 1879, § 63, p. 208; R.S.1913, § 5147; C.S.1922, § 4322; C.S.1929, § 17-513; R.S.1943, § 17-605; Laws 1973, LB 224, § 5; Laws 2013, LB112, § 3.
Effective date September 6, 2013.

Cross References

Records Management Act, see section 84-1220.

17-606 Treasurer; duties; failure to file account; penalty.

(1) The treasurer of each city and village shall be the custodian of all money belonging to the corporation. He or she shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and on what account paid. He or she shall also file copies of such receipts with his or her monthly reports, and he or she shall, at the end of every month, and as often as may be required, render an account to the city council or board of trustees, under oath, showing the state of the treasury at the date of such account and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with any and all vouchers held by him or her, shall be filed with his or her account in the clerk's office. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the governing body, the mayor in a city of the second class or the chairperson of the village board with the advice and consent of the trustees may use this failure as cause to remove the treasurer from office.

(2) The treasurer shall keep a record of all outstanding bonds against the city or village, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant to section 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

Source: Laws 1879, § 64, p. 209; R.S.1913, § 5148; C.S.1922, § 4323; C.S.1929, § 17-514; R.S.1943, § 17-606; Laws 2005, LB 528, § 2; Laws 2013, LB112, § 4.
Effective date September 6, 2013.

(c) ORDINANCES

17-614 Ordinances; how enacted; title.

(1) All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the council or board of trustees. The mayor of a city of the second class may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council. Ordinances of a general or permanent nature shall be read by title on three different days unless three-fourths of the council or board vote to suspend this requirement, except that such requirement shall not be suspended for any ordinance for the annexation of territory. In case such requirement is suspended, the ordinances shall be read by title and then moved for final passage. Three-fourths of the council or board may require a reading of any such ordinance in full before enactment under either procedure set out in this section.

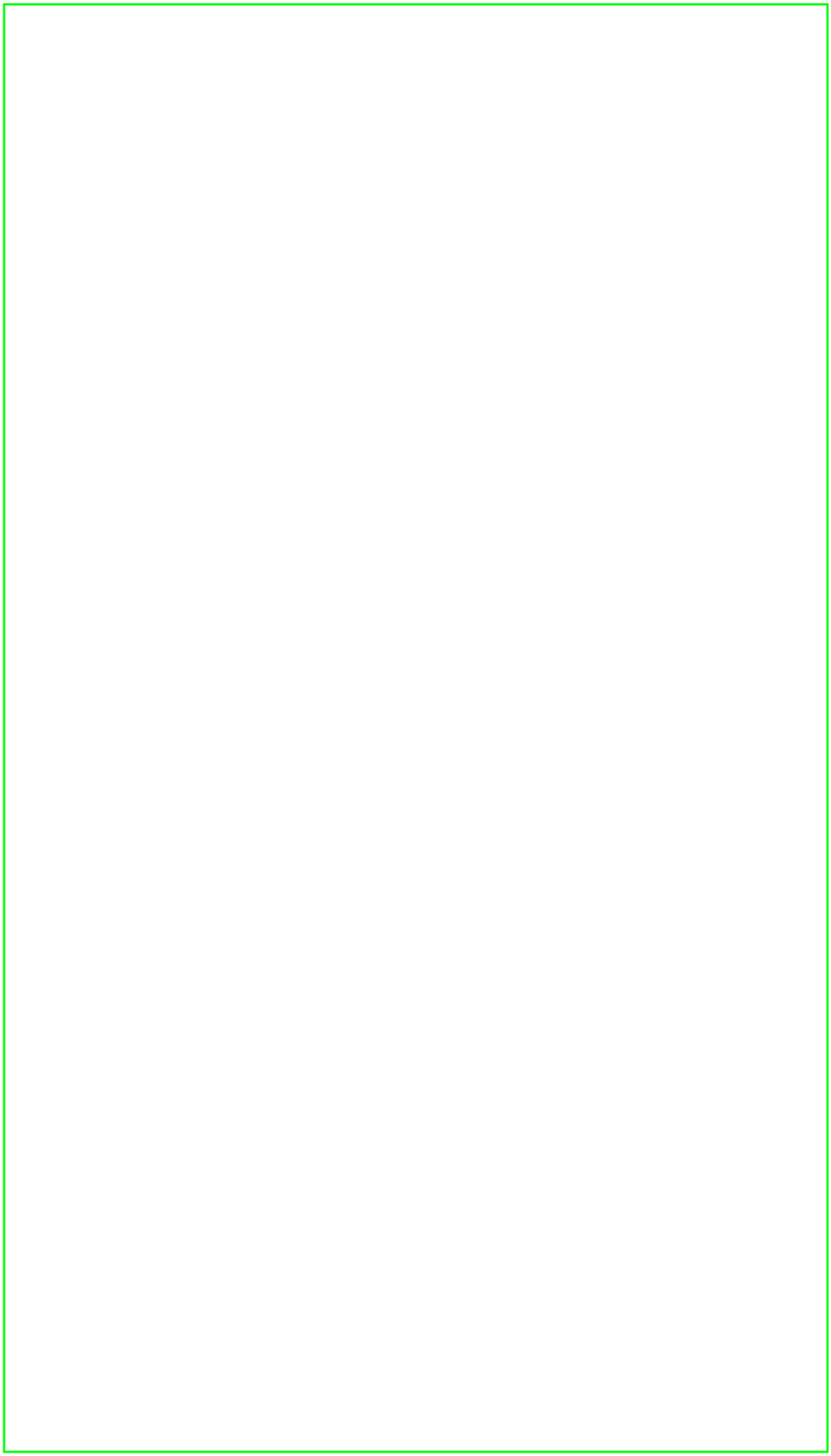
(2) Ordinances shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of the city or village, the title need only state that the ordinance revises all the ordinances of the city or village. Under such title all the ordinances may be revised in sections and chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or enacted in sections and chapters or otherwise by a single ordinance without other title.

Source: Laws 1879, § 79, p. 223; R.S.1913, § 5154; C.S.1922, § 4329; Laws 1929, c. 47, § 1, p. 202; C.S.1929, § 17-520; R.S.1943,

§ 17-614; Laws 1969, c. 108, § 3, p. 510; Laws 1972, LB 1235, § 2; Laws 1994, LB 630, § 3; Laws 2001, LB 484, § 2; Laws 2003, LB 365, § 2; Laws 2013, LB113, § 2.
Effective date September 6, 2013.



CHAPTER 18
CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.
21. Community Development. 18-2101 to 18-2147.
27. Municipal Economic Development. 18-2705.

ARTICLE 21
COMMUNITY DEVELOPMENT

Section
18-2101. Act, how cited.
18-2103. Terms, defined.
18-2123.01. Redevelopment project with property outside corporate limits; formerly used defense site; agreement with county authorized.
18-2147. Ad valorem tax; division authorized; limitation; fifteen-year period.

18-2101 Act, how cited.

Sections 18-2101 to 18-2144 shall be known and may be cited as the Community Development Law.

Source: Laws 1951, c. 224, § 1, p. 797; R.R.S.1943, § 14-1601; Laws 1957, c. 52, § 1, p. 247; R.R.S.1943, § 19-2601; Laws 1973, LB 299, § 1; Laws 1997, LB 875, § 2; Laws 2007, LB562, § 1; Laws 2013, LB66, § 1.
Effective date September 6, 2013.

18-2103 Terms, defined.

For purposes of the Community Development Law, unless the context otherwise requires:

(1) An authority means any community redevelopment authority created pursuant to section 18-2102.01 and a city or village which has created a community development agency pursuant to the provisions of section 18-2101.01 and does not include a limited community redevelopment authority;

(2) Limited community redevelopment authority means a community redevelopment authority created pursuant to section 18-2102.01 having only one single specific limited pilot project authorized;

(3) City means any city or incorporated village in the state;

(4) Public body means the state or any municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state;

(5) Governing body or local governing body means the city council, board of trustees, or other legislative body charged with governing the municipality;

(6) Mayor means the mayor of the city or chairperson of the board of trustees of the village;

(7) Clerk means the clerk of the city or village;

(8) Federal government means the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America;

(9) Area of operation means and includes the area within the corporate limits of the city and such land outside the city as may come within the purview of sections 18-2123 and 18-2123.01;

(10) Substandard areas means an area in which there is a predominance of buildings or improvements, whether nonresidential or residential in character, which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, (which cannot be remedied through construction of prisons), and is detrimental to the public health, safety, morals, or welfare;

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

(12) Redevelopment project means any work or undertaking in one or more community redevelopment areas: (a) To acquire substandard and blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas; (b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, parks, playgrounds, public spaces, public parking facilities, sidewalks or moving sidewalks, convention and civic centers, bus stop shelters, lighting, benches or other similar furniture, trash receptacles, shelters, skywalks and pedestrian and vehicular overpasses and underpasses, and any

other necessary public improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; (c) to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use or to retain such land for public use, in accordance with a redevelopment plan; and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project; (d) to dispose of all real and personal property or any interest in such property, or assets, cash, or other funds held or used in connection with residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or any public use specified in a redevelopment plan or project, except that such disposition shall be at its fair value for uses in accordance with the redevelopment plan; (e) to acquire real property in a community redevelopment area which, under the redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitate the structures, and resell the property; and (f) to carry out plans for a program of voluntary or compulsory repair, rehabilitation, or demolition of buildings or other improvements in accordance with the redevelopment plan;

(13) Redevelopment plan means a plan, as it exists from time to time for one or more community redevelopment areas, or for a redevelopment project, which (a) conforms to the general plan for the municipality as a whole and (b) is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area, zoning and planning changes, if any, land uses, maximum densities, and building requirements;

(14) Redeveloper means any person, partnership, or public or private corporation or agency which enters or proposes to enter into a redevelopment contract;

(15) Redevelopment contract means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan;

(16) Real property means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens;

(17) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Community Development Law except for bonds issued pursuant to section 18-2142.04;

(18) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any authority, established pursuant to section 18-2102.01, property used in connection with a redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with such authority;

(19) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic

and includes any trustee, receiver, assignee, or other similar representative thereof;

(20) Community redevelopment area means a substandard and blighted area which the community redevelopment authority designates as appropriate for a renewal project;

(21) Redevelopment project valuation means the valuation for assessment of the taxable real property in a redevelopment project last certified for the year prior to the effective date of the provision authorized in section 18-2147;

(22) Enhanced employment area means an area not exceeding six hundred acres (a) within a community redevelopment area which is designated by an authority as eligible for the imposition of an occupation tax or (b) not within a community redevelopment area as may be designated under section 18-2142.04;

(23) Employee means a person employed at a business as a result of a redevelopment project;

(24) Employer-provided health benefit means any item paid for by the employer in total or in part that aids in the cost of health care services, including, but not limited to, health insurance, health savings accounts, and employer reimbursement of health care costs;

(25) Equivalent employees means the number of employees computed by (a) dividing the total hours to be paid in a year by (b) the product of forty times the number of weeks in a year;

(26) Business means any private business located in an enhanced employment area;

(27) New investment means the value of improvements to real estate made in an enhanced employment area by a developer or a business;

(28) Number of new employees means the number of equivalent employees that are employed at a business as a result of the redevelopment project during a year that are in excess of the number of equivalent employees during the year immediately prior to the year that a redevelopment plan is adopted; and

(29) Occupation tax means a tax imposed under section 18-2142.02.

Source: Laws 1951, c. 224, § 3, p. 797; R.R.S.1943, § 14-1603; Laws 1957, c. 52, § 4, p. 249; Laws 1961, c. 61, § 3, p. 227; R.R.S. 1943, § 19-2603; Laws 1965, c. 74, § 3, p. 303; Laws 1969, c. 106, § 2, p. 488; Laws 1973, LB 299, § 3; Laws 1979, LB 158, § 2; Laws 1980, LB 986, § 2; Laws 1984, LB 1084, § 2; Laws 1993, LB 121, § 143; Laws 1997, LB 875, § 5; Laws 2007, LB562, § 2; Laws 2012, LB729, § 1; Laws 2013, LB66, § 2. Effective date September 6, 2013.

18-2123.01 Redevelopment project with property outside corporate limits; formerly used defense site; agreement with county authorized.

(1) Notwithstanding any other provisions of the Community Development Law to the contrary, a city may undertake a redevelopment project that includes real property located outside the corporate limits of such city if the following requirements have been met:

(a) The real property located outside the corporate limits of the city is a formerly used defense site;

(b) The formerly used defense site is located within the same county as the city approving such redevelopment project;

(c) The formerly used defense site is located within a sanitary and improvement district;

(d) The governing body of the city approving such redevelopment project passes an ordinance stating such city's intent to annex the formerly used defense site in the future; and

(e) The redevelopment project has been consented to by any city exercising extraterritorial jurisdiction over the formerly used defense site.

(2) For purposes of this section, formerly used defense site means real property that was formerly owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the United States Secretary of Defense. Formerly used defense site does not include missile silos.

(3) The inclusion of a formerly used defense site in any redevelopment project under this section shall not result in:

(a) Any change in the service area of any electric utility or natural gas utility unless such change has been agreed to by the electric utility or natural gas utility serving the formerly used defense site at the time of approval of such redevelopment project; or

(b) Any change in the service area of any communications company as defined in section 77-2734.04 unless (i) such change has been agreed to by the communications company serving the formerly used defense site at the time of approval of such redevelopment project or (ii) such change occurs pursuant to sections 86-135 to 86-138.

(4) A city approving a redevelopment project under this section and the county in which the formerly used defense site is located may enter into an agreement pursuant to the Interlocal Cooperation Act in which the county agrees to reimburse such city for any services the city provides to the formerly used defense site after approval of the redevelopment project.

Source: Laws 2013, LB66, § 3.
Effective date September 6, 2013.

Cross References

Interlocal Cooperation Act, see section 13-801.

18-2147 Ad valorem tax; division authorized; limitation; fifteen-year period.

(1) Any redevelopment plan as originally approved or as later modified pursuant to section 18-2117 may contain a provision that any ad valorem tax levied upon real property, or any portion thereof, in a redevelopment project for the benefit of any public body shall be divided, for a period not to exceed fifteen years after the effective date as identified in the project redevelopment contract or in the resolution of the authority authorizing the issuance of bonds pursuant to section 18-2124, as follows:

(a) That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the redevelopment project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body. When there is not a redevelopment project valuation on a parcel or parcels, the county

assessor shall determine the redevelopment project valuation based upon the fair market valuation of the parcel or parcels as of January 1 of the year prior to the year that the ad valorem taxes are to be divided. The county assessor shall provide written notice of the redevelopment project valuation to the authority as defined in section 18-2103 and the owner. The authority or owner may protest the valuation to the county board of equalization within thirty days after the date of the valuation notice. All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of the decision made by the county board of equalization on protests pursuant to this section to the authority or owner within seven days after the board's decision. Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision;

(b) That portion of the ad valorem tax on real property, as provided in the redevelopment contract or bond resolution, in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing, in whole or in part, the redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies; and

(c) Any interest and penalties due for delinquent taxes shall be paid into the funds of each public body in the same proportion as are all other taxes collected by or for the public body.

(2) The effective date of a provision dividing ad valorem taxes as provided in subsection (1) of this section shall not occur until such time as the real property in the redevelopment project is within the corporate boundaries of the city. This subsection shall not apply to a redevelopment project involving a formerly used defense site as authorized in section 18-2123.01.

(3) Beginning August 1, 2006, all notices of the provision for dividing ad valorem taxes shall be sent by the authority to the county assessor on forms prescribed by the Property Tax Administrator. The notice shall be sent to the county assessor on or before August 1 of the year of the effective date of the provision. Failure to satisfy the notice requirement of this section shall result in the taxes, for all taxable years affected by the failure to give notice of the effective date of the provision, remaining undivided and being paid into the funds for each public body receiving property taxes generated by the property in the redevelopment project. However, the redevelopment project valuation for the remaining division of ad valorem taxes in accordance with subdivisions (1)(a) and (b) of this section shall be the last certified valuation for the taxable year prior to the effective date of the provision to divide the taxes for the

remaining portion of the fifteen-year period pursuant to subsection (1) of this section.

Source: Laws 1979, LB 158, § 10; Laws 1997, LB 875, § 14; Laws 1999, LB 194, § 2; Laws 2002, LB 994, § 2; Laws 2006, LB 808, § 2; Laws 2006, LB 1175, § 2; Laws 2011, LB54, § 1; Laws 2013, LB66, § 4.
Effective date September 6, 2013.

ARTICLE 27

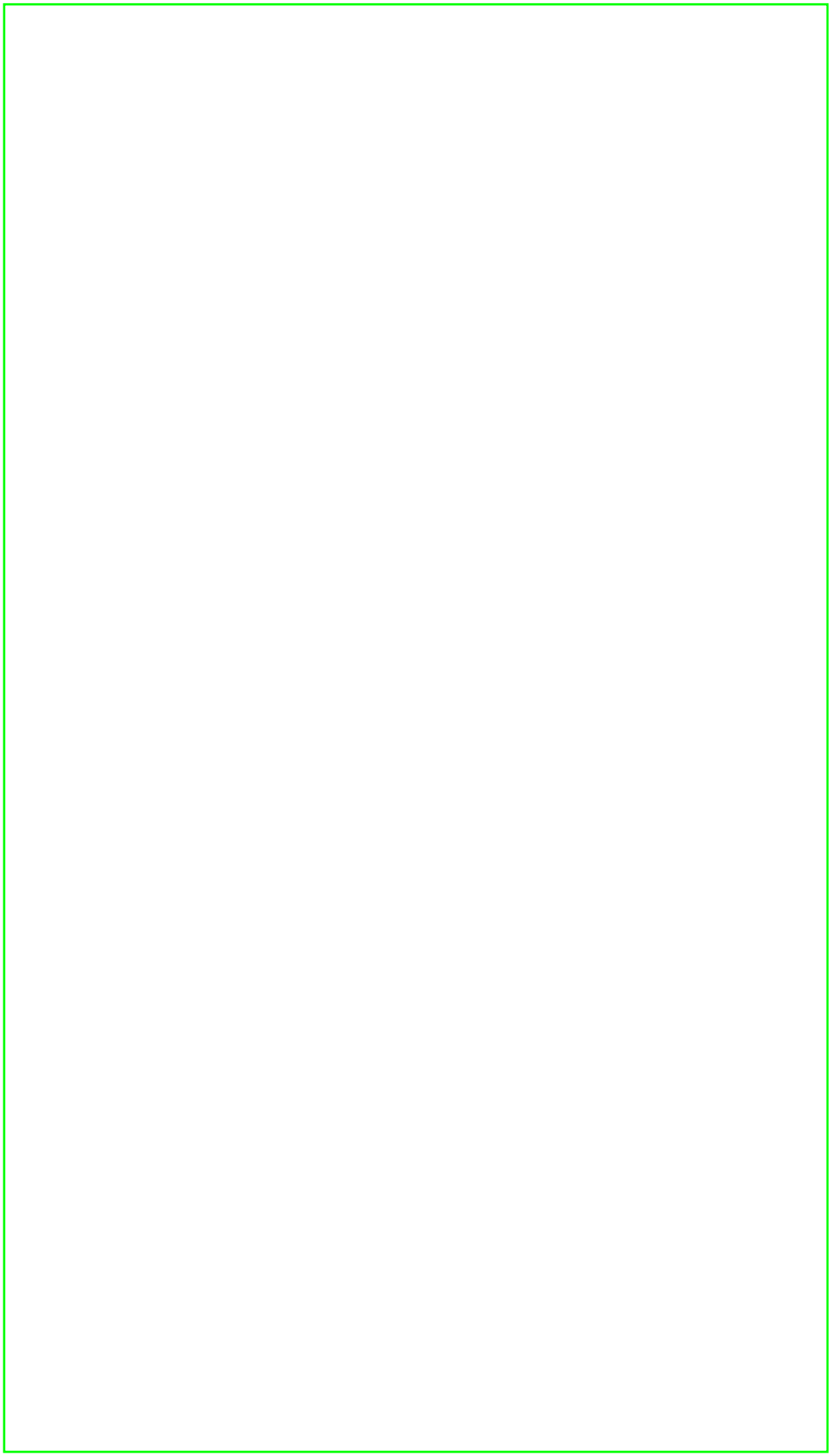
MUNICIPAL ECONOMIC DEVELOPMENT

Section
18-2705. Economic development program, defined.

18-2705 Economic development program, defined.

Economic development program means any project or program utilizing funds derived from local sources of revenue for the purpose of providing direct or indirect financial assistance to a qualifying business or the payment of related costs and expenses or both, without regard to whether that business is identified at the time the project or program is initiated or is to be determined by specified means at some time in the future. An economic development program may include, but shall not be limited to, the following activities: Direct loans or grants to qualifying businesses for fixed assets or working capital or both; loan guarantees for qualifying business; grants for public works improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business; grants or loans for job training; the purchase of real estate, options for such purchases, and the renewal or extension of such options; relocation incentives for new residents; the issuance of bonds as provided for in the Local Option Municipal Economic Development Act; and payments for salaries and support of city staff to implement the economic development program or the contracting of such to an outside entity. For cities of the first and second class and villages, an economic development program may also include grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income. For cities of the first and second class and villages, an economic development program may also include grants, loans, or funds for rural infrastructure development as defined in section 66-2102. An economic development program may be conducted jointly by two or more cities after the approval of the program by the voters of each participating city.

Source: Laws 1991, LB 840, § 6; Laws 1993, LB 732, § 17; Laws 1995, LB 207, § 3; Laws 2001, LB 827, § 13; Laws 2012, LB1115, § 8; Laws 2013, LB295, § 1.
Effective date April 4, 2013.



CHAPTER 19
CITIES AND VILLAGES; LAWS APPLICABLE TO MORE THAN ONE AND LESS THAN ALL CLASSES

ARTICLE 11
TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATION

19-1101 City or village treasurer; report for fiscal year; publication.

The treasurer of each city or village that has a population of not more than one hundred thousand inhabitants shall prepare and publish annually within sixty days after the close of its municipal fiscal year a statement of the receipts and expenditures of funds of the city or village for the preceding fiscal year. The statement shall also include the information required by subsection (3) of section 16-318 or subsection (2) of section 17-606. Not more than the legal rate provided for in section 33-141 shall be charged and paid for such publication.

Source: Laws 1919, c. 183, § 2, p. 410; C.S.1922, § 4377; C.S.1929, § 17-575; R.S.1943, § 19-1101; Laws 1959, c. 66, § 1, p. 292; Laws 1992, LB 415, § 2; Laws 2013, LB112, § 5.
Effective date September 6, 2013.

Cross References

City of the first class, receipts and expenditures, publication requirements, see section 16-722.

ARTICLE 52
NEBRASKA MUNICIPAL LAND BANK ACT

Section

19-5201 Act, how cited.

Sections 19-5201 to 19-5218 shall be known and may be cited as the Nebraska Municipal Land Bank Act.

Source: Laws 2013, LB97, § 1.
Operative date October 1, 2013.

19-5202 Legislative findings and declarations.

The Legislature finds and declares as follows:

(1) Nebraska's municipalities are important to the social and economic vitality of the state, and many municipalities are struggling to cope with vacant, abandoned, and tax-delinquent properties;

(2) Vacant, abandoned, and tax-delinquent properties represent lost revenue to municipalities and large costs associated with demolition, safety hazards, and the deterioration of neighborhoods;

(3) There is an overriding public need to confront the problems caused by vacant, abandoned, and tax-delinquent properties through the creation of new tools for municipalities to use to turn vacant spaces into vibrant places; and

(4) Land banks are one of the tools that can be utilized by municipalities to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use.

Source: Laws 2013, LB97, § 2.
Operative date October 1, 2013.

19-5203 Terms, defined.

For purposes of the Nebraska Municipal Land Bank Act:

(1) Board means the board of directors of a land bank;

(2) Land bank means a land bank established in accordance with the act;

(3) Municipality means any city or village of this state that is located (a) within a county in which a city of the metropolitan class is located or (b) within a county in which at least three cities of the first class are located; and

(4) Real property means lands, lands under water, structures, and any and all easements, air rights, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens

by way of judgment, mortgage, or otherwise, and any and all fixtures and improvements located thereon.

Source: Laws 2013, LB97, § 3.
Operative date October 1, 2013.

19-5204 Creation of land bank; procedure; use of Interlocal Cooperation Act; goal of land bank.

(1) A municipality may elect to create a land bank by the adoption of an ordinance which specifies the following:

(a) The name of the land bank;

(b) The initial individuals to serve as members of the board and the length of terms for which they are to serve; and

(c) The qualifications and terms of office of members of the board.

(2) Two or more municipalities may elect to enter into an agreement pursuant to the Interlocal Cooperation Act to create a single land bank to act on behalf of such municipalities, which agreement shall contain the information required by subsection (1) of this section.

(3) Each land bank created pursuant to the Nebraska Municipal Land Bank Act shall be deemed to be a public corporation acting in a governmental capacity and a political subdivision of the state and shall have permanent and perpetual duration until terminated and dissolved in accordance with section 19-5214.

(4) The primary goal of any land bank shall be to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use.

Source: Laws 2013, LB97, § 4.
Operative date October 1, 2013.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5205 Board; requirements; members; qualifications; vacancy; compensation; meetings; actions of board; liability; automatically accepted bid procedure; reasons.

(1) If a land bank is created by a single municipality, the board of such land bank shall meet the following requirements:

(a) The board shall consist of:

(i) Seven voting members appointed by the mayor of the municipality that created the land bank and confirmed by a two-thirds vote of the governing body of such municipality;

(ii) The planning director of the municipality that created the land bank or his or her designee, as a nonvoting, ex officio member; and

(iii) Such other nonvoting members as are appointed by the mayor of the municipality that created the land bank;

(b) The seven voting members of the board shall be residents of the municipality that created the land bank;

(c) If the governing body of the municipality creating the land bank has any of its members elected by district or ward, then at least one voting member of the board shall be appointed from each such district or ward. Such voting

members shall represent, to the greatest extent possible, the racial and ethnic diversity of the municipality creating the land bank;

(d) The seven voting members of the board shall have, collectively, verifiable skills, expertise, and knowledge in market-rate and affordable residential, commercial, industrial, and mixed-use real estate development, financing, law, purchasing and sales, asset management, economic and community development, and the acquisition of tax sale certificates; and

(e) The seven voting members of the board shall include:

(i) At least one member representing realtors;

(ii) At least one member representing the banking industry;

(iii) At least one member representing real estate developers;

(iv) At least one member representing a chamber of commerce;

(v) At least one member representing a nonprofit corporation involved in affordable housing; and

(vi) At least one member representing owners of multiple residential or commercial properties.

(2) If a land bank is created by more than one municipality pursuant to an agreement under the Interlocal Cooperation Act, the board of such land bank shall meet the following requirements:

(a) The board shall consist of:

(i) An odd number of voting members, totaling at least seven, appointed by the mayors of the municipalities that created the land bank, as mutually agreed to by such mayors, and confirmed by a two-thirds vote of the governing body of each municipality that created the land bank;

(ii) The planning director of each municipality that created the land bank or his or her designee, as nonvoting, ex officio members; and

(iii) Such other nonvoting members as are appointed by the mayors of the municipalities that created the land bank, as mutually agreed to by such mayors;

(b) Each voting member of the board shall be a resident of one of the municipalities that created the land bank, with at least one voting member appointed from each such municipality;

(c) If the governing body of the largest municipality creating the land bank has any of its members elected by district or ward, then at least one voting member of the board shall be appointed from each such district or ward. Such voting members shall represent, to the greatest extent possible, the racial and ethnic diversity of the largest municipality creating the land bank;

(d) The voting members of the board shall have, collectively, verifiable skills, expertise, and knowledge in market-rate and affordable residential, commercial, industrial, and mixed-use real estate development, financing, law, purchasing and sales, asset management, economic and community development, and the acquisition of tax sale certificates; and

(e) The voting members of the board shall include:

(i) At least one member representing realtors;

(ii) At least one member representing the banking industry;

(iii) At least one member representing real estate developers;

(iv) At least one member representing a chamber of commerce;

(v) At least one member representing a nonprofit corporation involved in affordable housing; and

(vi) At least one member representing owners of multiple residential or commercial properties.

(3) The members of the board shall select annually from among themselves a chairperson, a vice-chairperson, a treasurer, and such other officers as the board may determine.

(4) A public official or public employee shall be eligible to be a member of the board.

(5) A vacancy on the board among the appointed board members shall be filled in the same manner as the original appointment.

(6) Board members shall serve without compensation.

(7) The board shall meet in regular session according to a schedule adopted by the board and shall also meet in special session as convened by the chairperson or upon written notice signed by a majority of the voting members. The presence of a majority of the voting members of the board shall constitute a quorum.

(8) Except as otherwise provided in subsections (9) and (11) of this section and in sections 19-5210 and 19-5214, all actions of the board shall be approved by the affirmative vote of a majority of the voting members present and voting.

(9) Any action of the board on the following matters shall be approved by a majority of the voting members:

(a) Adoption of bylaws and other rules and regulations for conduct of the land bank's business;

(b) Hiring or firing of any employee or contractor of the land bank. This function may, by majority vote of the voting members, be delegated by the board to a specified officer or committee of the land bank, under such terms and conditions, and to the extent, that the board may specify;

(c) The incurring of debt;

(d) Adoption or amendment of the annual budget; and

(e) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property with a value of more than fifty thousand dollars.

(10) Members of a board shall not be liable personally on the bonds or other obligations of the land bank, and the rights of creditors shall be solely against such land bank.

(11) The board shall adopt policies and procedures to specify the conditions that must be met in order for the land bank to give an automatically accepted bid as authorized in sections 19-5217 and 19-5218. The adoption of such policies and procedures shall require the approval of two-thirds of the voting members of the board. At a minimum, such policies and procedures shall ensure that the automatically accepted bid shall only be given for one of the following reasons:

(a) The real property substantially meets more than one of the following criteria as determined by two-thirds of the voting members of the board:

(i) The property is not occupied by the owner or any lessee or licensee of the owner;

(ii) There are no utilities currently being provided to the property;

(iii) Any buildings on the property have been deemed unfit for human habitation, occupancy, or use by local housing officials;

(iv) Any buildings on the property are exposed to the elements such that deterioration of the building is occurring;

(v) Any buildings on the property are boarded up;

(vi) There have been previous efforts to rehabilitate any buildings on the property;

(vii) There is a presence of vermin, uncut vegetation, or debris accumulation on the property;

(viii) There have been past actions by the municipality to maintain the grounds or any building on the property; or

(ix) The property has been out of compliance with orders of local housing officials;

(b) The real property is contiguous to a parcel that meets more than one of the criteria in subdivision (11)(a) of this section or that is already owned by the land bank; or

(c) Acquisition of the real property by the land bank would serve the best interests of the community as determined by two-thirds of the voting members of the board. In determining whether the acquisition would serve the best interests of the community, the board shall take into consideration the hierarchical ranking of priorities for the use of real property conveyed by a land bank established pursuant to subsection (5) of section 19-5210, if any such hierarchical ranking is established.

Source: Laws 2013, LB97, § 5.
Operative date October 1, 2013.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5206 Agents and employees.

A land bank may employ such agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation and benefits of such persons.

Source: Laws 2013, LB97, § 6.
Operative date October 1, 2013.

19-5207 Land bank; powers; no power of eminent domain.

(1) A land bank shall have the following powers:

(a) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(b) To sue and be sued in its own name and plead and be impleaded in all civil actions;

(c) To borrow money from private lenders, from municipalities, from the state, or from federal government funds as may be necessary for the operation and work of the land bank;

(d) To issue negotiable revenue bonds and notes according to the provisions of the Nebraska Municipal Land Bank Act;

(e) To procure insurance or guarantees from the state or federal government of the payments of any debts or parts thereof incurred by the land bank and to pay premiums in connection therewith;

(f) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements under the Interlocal Cooperation Act for the joint exercise of powers under the Nebraska Municipal Land Bank Act;

(g) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of functions by the land bank on behalf of municipalities or agencies or departments of municipalities, or the performance by municipalities or agencies or departments of municipalities of functions on behalf of the land bank;

(h) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the land bank;

(i) To provide foreclosure prevention counseling and re-housing assistance;

(j) To procure insurance against losses in connection with the real property, assets, or activities of the land bank;

(k) To invest money of the land bank, at the discretion of the board, in instruments, obligations, securities, or property determined proper by the board and name and use depositories for its money;

(l) To enter into contracts for the management of, the collection of rent from, or the sale of real property of the land bank;

(m) To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property of the land bank;

(n) To fix, charge, and collect fees and charges for services provided by the land bank;

(o) To fix, charge, and collect rents and leasehold payments for the use of real property of the land bank for a period not to exceed twelve months, except that such twelve-month limitation shall not apply if the real property of the land bank is subject to a lease with a remaining term of more than twelve months at the time such real property is acquired by the land bank;

(p) To grant or acquire a license, easement, lease, as lessor and as lessee, or option with respect to real property of the land bank;

(q) To enter into partnerships, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property; and

(r) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibilities of the land bank.

(2) A land bank shall neither possess nor exercise the power of eminent domain.

Source: Laws 2013, LB97, § 7.
Operative date October 1, 2013.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-5208 Land bank; acquire property; limits; maintenance; accept transfer from land reutilization authority.

(1) A land bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the land bank considers proper.

(2) A land bank may acquire real property or interests in real property by purchase contracts, lease-purchase agreements, installment sales contracts, or land contracts and may accept transfers from political subdivisions upon such terms and conditions as agreed to by the land bank and the political subdivision. Notwithstanding any other law to the contrary, any political subdivision may transfer to the land bank real property and interests in real property of the political subdivision on such terms and conditions and according to such procedures as determined by the political subdivision.

(3) A land bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

(4) A land bank shall not own or hold real property located outside the jurisdictional boundaries of the municipality or municipalities that created the land bank. For purposes of this subsection, jurisdictional boundaries of a municipality does not include the extraterritorial zoning jurisdiction of such municipality.

(5) A land bank may accept transfers of real property and interests in real property from a land reutilization authority on such terms and conditions, and according to such procedures, as mutually determined by the transferring land reutilization authority and the land bank.

(6) A land bank shall not hold legal title at any one time to more than seven percent of the total number of parcels of real property located in the municipality or municipalities that created the land bank.

Source: Laws 2013, LB97, § 8.
Operative date October 1, 2013.

19-5209 Exemption from taxation.

The real property of a land bank and the land bank's income and operations are exempt from all taxation by the state or any political subdivision thereof.

Source: Laws 2013, LB97, § 9.
Operative date October 1, 2013.

19-5210 Land bank; hold property in own name; inventory; consideration for transfer of property; form; powers; priorities for use; limits on certain dispositions.

(1) A land bank shall hold in its own name all real property acquired by the land bank irrespective of the identity of the transferor of such property.

(2) A land bank shall maintain and make available for public review and inspection an inventory of all real property held by the land bank.

(3) A land bank shall determine and set forth in policies and procedures of the board the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future

use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board to be in the best interest of the land bank.

(4) A land bank may convey, exchange, sell, transfer, grant, release and demise, pledge, and hypothecate any and all interests in, upon, or to real property of the land bank. A land bank may lease as lessor real property of the land bank for a period not to exceed twelve months, except that such twelve-month limitation shall not apply if the real property of the land bank is subject to a lease with a remaining term of more than twelve months at the time such real property is acquired by the land bank.

(5) The municipality or municipalities that created the land bank may establish by resolution or ordinance a hierarchical ranking of priorities for the use of real property conveyed by a land bank. Such ranking shall take into consideration the highest and best use that, when possible, will bring the greatest benefit to the community. The priorities may include, but are not limited to, (a) use for purely public spaces and places, (b) use for affordable housing, (c) use for retail, commercial, and industrial activities, and (d) such other uses and in such hierarchical order as determined by the municipality or municipalities.

(6) The municipality or municipalities that created the land bank may require by resolution or ordinance that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the board. Except and unless restricted or constrained in this manner, the board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the conveyance of real property by the land bank.

Source: Laws 2013, LB97, § 10.
Operative date October 1, 2013.

19-5211 Land bank; funding; real property taxes collected on conveyed property; allocation; notice to county treasurer; when required.

(1) A land bank may receive funding through grants and loans from the municipality or municipalities that created the land bank, from other municipalities, from the state, from the federal government, and from other public and private sources.

(2) A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a land bank under the Nebraska Municipal Land Bank Act.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, fifty percent of the real property taxes collected on real property conveyed by a land bank pursuant to the laws of this state shall be remitted to the land bank. Such allocation of property tax revenue shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years. Such allocation of property tax revenue shall not occur if such taxes have been divided under section 18-2147 as part of a redevelopment project under the Community Development Law, unless the authority, as defined in section

18-2103, enters into an agreement with the land bank for the remittance of such funds to the land bank.

(b) A land bank may, by resolution of the board, elect not to receive the real property taxes described in subdivision (a) of this subsection for any real property conveyed by the land bank. If such an election is made, the land bank shall notify the county treasurer of the county in which the real property is located by filing a copy of the resolution with the county treasurer, and thereafter the county treasurer shall remit such real property taxes to the appropriate taxing entities.

Source: Laws 2013, LB97, § 11.
Operative date October 1, 2013.

Cross References

Community Development Law, see section 18-2101.

19-5212 Land bank; bonds; issuance; procedure; negotiable instruments; tax exempt; liability.

(1) A land bank shall have the power to issue bonds for any of its corporate purposes, the principal and interest of which are payable from its revenue generally. Any of such bonds shall be secured by a pledge of any revenue of the land bank or by a mortgage of any property of the land bank.

(2) The bonds issued by a land bank are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code.

(3) The bonds of a land bank and the income therefrom shall at all times be exempt from all taxes imposed by the state or any political subdivision thereof.

(4) Bonds issued by the land bank shall be authorized by resolution of the board and shall be limited obligations of the land bank. The principal and interest, costs of issuance, and other costs incidental thereto shall be payable solely from the income and revenue derived from the sale, lease, or other disposition of the assets of the land bank. Any refunding bonds issued shall be payable from any source described above or from the investment of any of the proceeds of the refunding bonds, and shall not constitute an indebtedness or pledge of the general credit of any municipality within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. Bonds of the land bank shall be issued in such form, shall be in such denominations, shall bear interest, shall mature in such manner, and shall be executed by one or more members of the board as provided in the resolution authorizing the issuance thereof. Such bonds may be subject to redemption at the option of and in the manner determined by the board in the resolution authorizing the issuance thereof.

(5) Bonds issued by the land bank shall be issued, sold, and delivered in accordance with the terms and provisions of a resolution adopted by the board. The board may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be in the best interests of the land bank. The resolution issuing bonds shall be published in a newspaper of general circulation within the municipality or municipalities that created the land bank.

(6) Neither the members of the board nor any person executing the bonds shall be liable personally on any such bonds by reason of the issuance thereof. Such bonds or other obligations of a land bank shall not be a debt of any

municipality and shall so state on their face, nor shall any municipality nor any revenue or any property of any municipality be liable therefor.

Source: Laws 2013, LB97, § 12.
Operative date October 1, 2013.

Cross References

Uniform Commercial Code, see section 1-101, Uniform Commercial Code.

19-5213 Board; minutes; record; meetings; public records; reports.

(1) The board shall cause minutes and a record to be kept of all its proceedings. Meetings of the board shall be subject to the Open Meetings Act.

(2) All of a land bank's records and documents shall be considered public records for purposes of sections 84-712 to 84-712.09.

(3) The board shall provide monthly reports to the municipality or municipalities that created the land bank on the board's activities pursuant to the Nebraska Municipal Land Bank Act. The board shall also provide an annual report to the municipality or municipalities that created the land bank and to the Revenue Committee of the Legislature by December 31 of each year summarizing the board's activities for the year. The report submitted to the Revenue Committee shall be submitted electronically.

Source: Laws 2013, LB97, § 13.
Operative date October 1, 2013.

Cross References

Open Meetings Act, see section 84-1407.

19-5214 Land bank; dissolution; procedure; notice; assets.

A land bank may be dissolved sixty calendar days after a resolution of dissolution is approved by two-thirds of the voting members of the board and by two-thirds of the membership of the governing body of the municipality or municipalities that created the land bank. The board shall give sixty calendar days' advance written notice of its consideration of a resolution of dissolution by publishing such notice in a newspaper of general circulation within the municipality or municipalities that created the land bank and shall send such notice by certified mail to the trustee of any outstanding bonds of the land bank. Upon dissolution of the land bank, all real property, personal property, and other assets of the land bank shall become the assets of the municipality or municipalities that created the land bank.

Source: Laws 2013, LB97, § 14.
Operative date October 1, 2013.

19-5215 Conflicts of interest; board; duties.

(1) No member of the board or employee of a land bank shall acquire any interest, direct or indirect, in real property of the land bank, in any real property to be acquired by the land bank, or in any real property to be acquired from the land bank. No member of the board or employee of a land bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a land bank.

(2) The board shall adopt:

(a) Rules addressing potential conflicts of interest; and

(b) Ethical guidelines for members of the board and employees of the land bank.

Source: Laws 2013, LB97, § 15.
Operative date October 1, 2013.

19-5216 Tax lien or claim; discharge and extinguishment; procedure; remit payments to county treasurer.

(1) Whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes owed to one or more political subdivisions of the state, the land bank may, by resolution of the board, discharge and extinguish any and all such liens or claims, except that no lien or claim represented by a tax sale certificate held by a private third party shall be discharged or extinguished pursuant to this section. To the extent necessary and appropriate, the land bank shall file in appropriate public records evidence of the extinguishment and dissolution of such liens or claims.

(2) To the extent that a land bank receives payments of any kind attributable to liens or claims for real property taxes owed to a political subdivision on property acquired by the land bank, the land bank shall remit the full amount of the payments to the county treasurer of the county that levied such taxes for distribution to the appropriate taxing entity.

Source: Laws 2013, LB97, § 16.
Operative date October 1, 2013.

19-5217 Sale of property for nonpayment of taxes; land bank; power to bid; purchase of tax sale certificate; apply for tax deed or foreclose lien.

(1)(a) At any sale of real property for the nonpayment of taxes conducted pursuant to sections 77-1801 to 77-1863, a land bank may:

(i) Bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If a bid is given pursuant to this subdivision, the bid shall not receive any special treatment by the county treasurer and shall be accepted or rejected in the same manner as any other bid on such real property; or

(ii) Give an automatically accepted bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If an automatically accepted bid is given, it shall be accepted by the county treasurer regardless of any other bids on such real property. An automatically accepted bid may be given only if the conditions for making such a bid prescribed by the board pursuant to subsection (11) of section 19-5205 have been met.

(b) If a land bank's bid pursuant to subdivision (1)(a) of this section is accepted by the county treasurer, the land bank shall pay the county treasurer and shall be entitled to a tax sale certificate for such real property.

(2) If a county holds a tax sale certificate pursuant to section 77-1809, a land bank may purchase such tax sale certificate from the county by paying the county treasurer the amount expressed on the face of the certificate and interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax sale certificate was first issued to the county to the date such certificate was purchased by the land bank.

(3) Within six months after the expiration of three years from the date of sale of real property for the nonpayment of taxes pursuant to sections 77-1801 to 77-1863, a land bank that has acquired a tax sale certificate for such real property under this section may:

(a) Apply to the county treasurer for a tax deed for the real property described in the tax sale certificate. A land bank applying for a tax deed shall comply with all the requirements of sections 77-1801 to 77-1863 relating to such tax deed; or

(b) Foreclose the lien represented by the tax sale certificate as authorized in section 77-1902.

Source: Laws 2013, LB97, § 17.
Operative date October 1, 2013.

19-5218 Sale of property as part of foreclosure proceedings; land bank; powers.

(1)(a) At any sale of real property conducted as part of foreclosure proceedings under sections 77-1901 to 77-1941, a land bank may:

(i) Bid on such real property in an amount that the land bank would be willing to pay for such real property. If a bid is given pursuant to this subdivision, the bid shall not receive any special treatment by the sheriff conducting the sale and shall be accepted or rejected in the same manner as any other bid on such real property; or

(ii) Give an automatically accepted bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If an automatically accepted bid is given, it shall be accepted by the sheriff regardless of any other bids on such real property. An automatically accepted bid may be given only if the conditions for making such a bid prescribed by the board pursuant to subsection (11) of section 19-5205 have been met and only if the land bank has obtained written consent to the tender of an automatically accepted bid from the holder of a mortgage or the beneficiary or trustee under a trust deed giving rise to a lien against such real property. To obtain such written consent, the land bank shall send, by certified mail, a notice of its intent to make an automatically accepted bid to any such holder of a mortgage or beneficiary or trustee under a trust deed and shall request that written consent be given within thirty days. If no response is given within such thirty-day time period, such holder of a mortgage or beneficiary or trustee under a trust deed shall be deemed to have given written consent.

(b) If a land bank's bid pursuant to subdivision (1)(a) of this section is accepted by the sheriff, the land bank shall pay the sheriff and shall be entitled to a deed to the real property in accordance with sections 77-1901 to 77-1941.

(2) If a sheriff attempts to sell real property as part of foreclosure proceedings under sections 77-1901 to 77-1941, there is no bid given at such sale equal to the total amount of taxes, interest, and costs due thereon, and the real property being sold lies within a municipality that has created a land bank, then such land bank shall be deemed to have bid the total amount of taxes, interest, and costs due thereon and such bid shall be accepted by the sheriff. The land bank may then discharge and extinguish the liens for delinquent taxes included in the foreclosure proceedings pursuant to section 19-5216. The land

bank shall then be entitled to a deed to the real property in accordance with sections 77-1901 to 77-1941.

Source: Laws 2013, LB97, § 18.
Operative date October 1, 2013.

CHAPTER 20
CIVIL RIGHTS

Article.
5. Racial Profiling. 20-501 to 20-506.

ARTICLE 5
RACIAL PROFILING

Section
20-501. Racial profiling; legislative intent.
20-502. Racial profiling prohibited.
20-504. Written racial profiling prevention policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; powers; duties; records maintained; immunity; law enforcement officer, prosecutor, defense attorney, or probation officer; report required.
20-505. Forms authorized.
20-506. Racial Profiling Advisory Committee; created; members; duties.

20-501 Racial profiling; legislative intent.

Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated. An individual who has been detained or whose vehicle has been stopped by the police for no reason other than the color of his or her skin or his or her apparent nationality or ethnicity is the victim of a discriminatory practice.

Source: Laws 2001, LB 593, § 1; Laws 2013, LB99, § 1.
Effective date September 6, 2013.

20-502 Racial profiling prohibited.

(1) No member of the Nebraska State Patrol or a county sheriff's office, officer of a city or village police department, or member of any other law enforcement agency in this state shall engage in racial profiling. The disparate treatment of an individual who has been detained or whose motor vehicle has been stopped by a law enforcement officer is inconsistent with this policy.

(2) Racial profiling shall not be used to justify the detention of an individual or to conduct a motor vehicle stop.

Source: Laws 2001, LB 593, § 2; Laws 2013, LB99, § 2.
Effective date September 6, 2013.

20-504 Written racial profiling prevention policy; contents; Nebraska Commission on Law Enforcement and Criminal Justice; powers; duties; records maintained; immunity; law enforcement officer, prosecutor, defense attorney, or probation officer; report required.

(1) On or before January 1, 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall adopt and provide a copy to the Nebraska Commission on Law Enforcement and Criminal Justice of a written policy that prohibits the detention of any person or a motor vehicle stop when such action is motivated

by racial profiling. Such racial profiling prevention policy shall include definitions consistent with section 20-503 and one or more internal methods of prevention and enforcement, including, but not limited to:

(a) Internal affairs investigation;

(b) Preventative measures including extra training at the Nebraska Law Enforcement Training Center focused on avoidance of apparent or actual racial profiling;

(c) Early intervention with any particular personnel determined by the administration of the agency to have committed, participated in, condoned, or attempted to cover up any instance of racial profiling; and

(d) Disciplinary measures or other formal or informal methods of prevention and enforcement.

None of the preventative or enforcement measures shall be implemented contrary to the collective-bargaining agreement provisions or personnel rules under which the member or officer in question is employed.

(2) The Nebraska Commission on Law Enforcement and Criminal Justice may develop and distribute a suggested model written racial profiling prevention policy for use by law enforcement agencies, but the commission shall not mandate the adoption of the model policy except for any particular law enforcement agency which fails to timely create and provide to the commission a policy for the agency in conformance with the minimum standards set forth in this section.

(3) With respect to a motor vehicle stop, on and after January 1, 2002, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall record and retain the following information using the form developed and promulgated pursuant to section 20-505:

(a) The number of motor vehicle stops;

(b) The characteristics of race or ethnicity of the person stopped. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop and the information shall not be required to be provided by the person stopped;

(c) If the stop is for a law violation, the nature of the alleged law violation that resulted in the motor vehicle stop;

(d) Whether a warning or citation was issued, an arrest made, or a search conducted as a result of the motor vehicle stop. Search does not include a search incident to arrest or an inventory search; and

(e) Any additional information that the Nebraska State Patrol, the county sheriffs, all city and village police departments, or any other law enforcement agency in this state, as the case may be, deems appropriate.

(4) The Nebraska Commission on Law Enforcement and Criminal Justice may develop a uniform system for receiving allegations of racial profiling. The Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall provide to the commission (a) a copy of each allegation of racial profiling received and (b) written notification of the review and disposition of such allegation. No information revealing the identity of the law enforcement officer involved in the stop

shall be used, transmitted, or disclosed in violation of any collective-bargaining agreement provision or personnel rule under which such law enforcement officer is employed. No information revealing the identity of the complainant shall be used, transmitted, or disclosed in the form alleging racial profiling.

(5) Any law enforcement officer who in good faith records information on a motor vehicle stop pursuant to this section shall not be held civilly liable for the act of recording such information unless the law enforcement officer's conduct was unreasonable or reckless or in some way contrary to law.

(6) On or before October 1, 2002, and annually thereafter, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and all other law enforcement agencies in this state shall provide to the Nebraska Commission on Law Enforcement and Criminal Justice, in such form as the commission prescribes, a summary report of the information recorded pursuant to subsection (3) of this section.

(7) The Nebraska Commission on Law Enforcement and Criminal Justice shall, within the limits of its existing appropriations, including any grant funds which the commission is awarded for such purpose, provide for an annual review and analysis of the prevalence and disposition of motor vehicle stops based on racial profiling and allegations of racial profiling involved in other detentions reported pursuant to this section. After the review and analysis, the commission may, when it deems warranted, inquire into and study individual law enforcement agency circumstances in which the raw data collected and analyzed raises at least some issue or appearance of possible racial profiling. The commission may make recommendations to any such law enforcement agency for the purpose of improving measures to prevent racial profiling or the appearance of racial profiling. The results of such review, analysis, inquiry, and study and any recommendations by the commission to any law enforcement agency shall be reported annually to the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically.

(8) Any law enforcement officer, prosecutor, defense attorney, or probation officer, unless restricted by privilege, who becomes aware of incidents of racial profiling by a law enforcement agency, shall report such incidents to the Nebraska Commission on Law Enforcement and Criminal Justice within thirty days after becoming aware of such practice.

Source: Laws 2001, LB 593, § 4; Laws 2004, LB 1162, § 2; Laws 2006, LB 1113, § 19; Laws 2010, LB746, § 1; Laws 2012, LB782, § 21; Laws 2013, LB99, § 3.
Effective date September 6, 2013.

20-505 Forms authorized.

On or before January 1, 2002, the Nebraska Commission on Law Enforcement and Criminal Justice, the Superintendent of Law Enforcement and Public Safety, the Attorney General, and the State Court Administrator may adopt and promulgate (1) a form, in printed or electronic format, to be used by a law enforcement officer when making a motor vehicle stop to record personal identifying information about the operator of such motor vehicle, the location of the stop, the reason for the stop, and any other information that is required to be recorded pursuant to subsection (3) of section 20-504 and (2) a form, in

printed or electronic format, to be used to report an allegation of racial profiling by a law enforcement officer.

Source: Laws 2001, LB 593, § 5; Laws 2013, LB99, § 4.
Effective date September 6, 2013.

20-506 Racial Profiling Advisory Committee; created; members; duties.

(1) The Racial Profiling Advisory Committee is created.

(2)(a) The committee shall consist of:

(i) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, who also shall be the chairperson of the committee;

(ii) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(iii) The director of the Commission on Latino-Americans or his or her designee; and

(iv) The executive director of the Commission on Indian Affairs or his or her designee.

(b) The committee shall also consist of the following persons, each appointed by the Governor from a list of five names submitted to the Governor for each position:

(i) A representative of the Fraternal Order of Police;

(ii) A representative of the Nebraska County Sheriffs Association;

(iii) A representative of the Police Officers Association of Nebraska;

(iv) A representative of the American Civil Liberties Union of Nebraska;

(v) A representative of the AFL-CIO;

(vi) A representative of the Police Chiefs Association of Nebraska;

(vii) A representative of the Nebraska branches of the National Association for the Advancement of Colored People; and

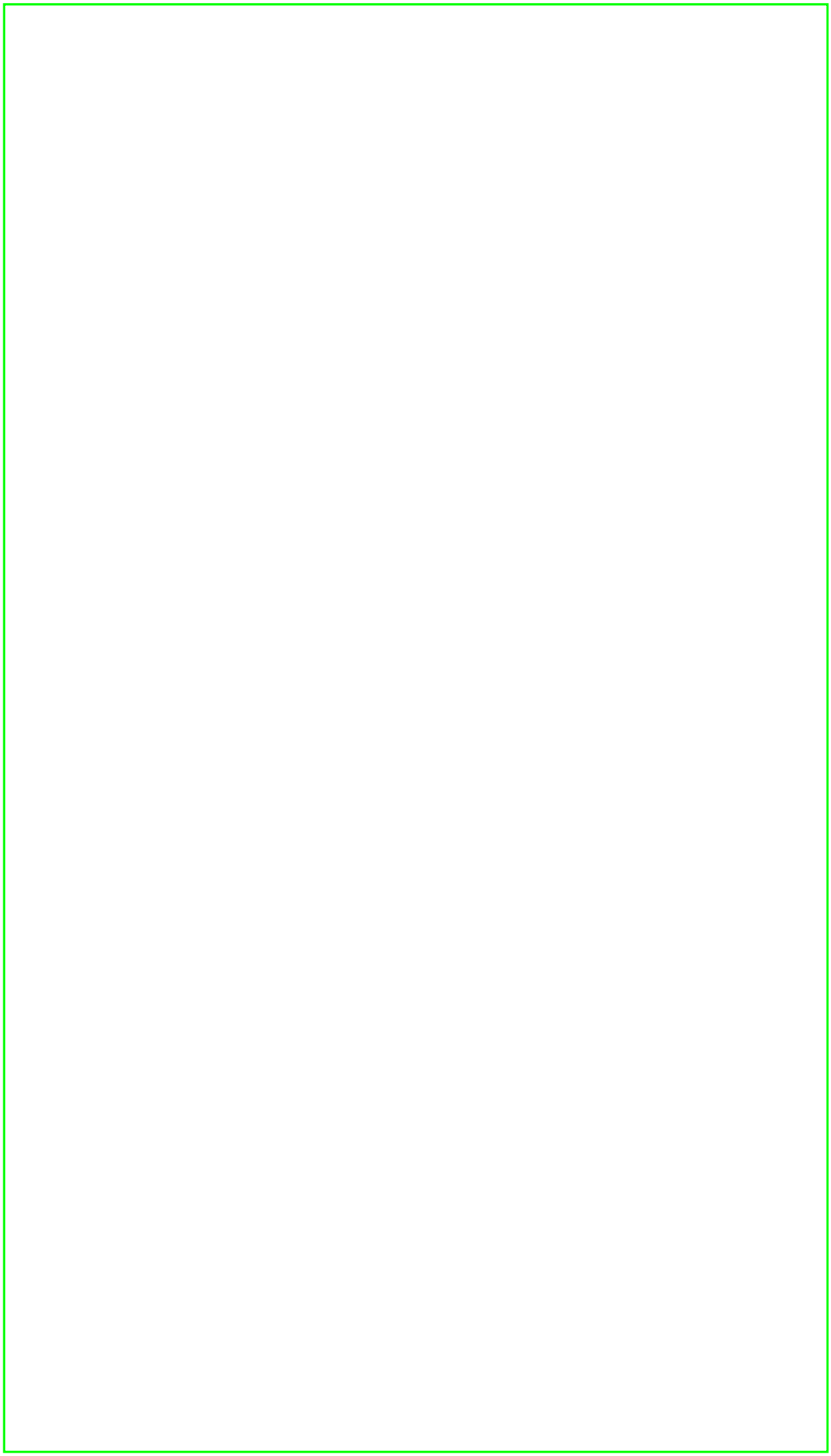
(viii) A representative of the Nebraska State Bar Association appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet semiannually at a time and place to be fixed by the committee. Special meetings may be called by the chairperson or at the request of two or more members of the committee.

(4) The committee shall advise the commission and its executive director in the conduct of their duties regarding (a) the completeness and acceptability of written racial profiling prevention policies submitted by individual law enforcement agencies as required by subsection (1) of section 20-504, (b) the collection of data by law enforcement agencies, any needed additional data, and any needed additional analysis, investigation, or inquiry as to the data provided pursuant to subsection (3) of section 20-504, (c) the review, analysis, inquiry, study, and recommendations required pursuant to subsection (7) of section 20-504, including an analysis of the review, analysis, inquiry, study, and recommendations, and (d) policy recommendations with respect to the preven-

tion of racial profiling and the need, if any, for enforcement by the Department of Justice of the prohibitions found in section 20-502.

Source: Laws 2004, LB 1162, § 5; Laws 2010, LB746, § 2; Laws 2013, LB99, § 5.
Effective date September 6, 2013.



CHAPTER 21
CORPORATIONS AND OTHER COMPANIES

ARTICLE 6
CHARITABLE AND FRATERNAL SOCIETIES

21-610 Societies declared to be corporations; power to act as administrator, executor, guardian, or trustee.

When any such organization has established in this state an institution for the care of children or persons who are incapacitated in any manner and such institution has been incorporated under the laws of Nebraska, such corporation shall have power to act either by itself or jointly with any natural person or persons (1) as administrator of the estate of any deceased person whose domicile was within the county in which the corporation is located or whose domicile was outside the State of Nebraska, (2) as executor under a last will and testament or as guardian of the property of any infant, person with an intellectual disability, person with a mental disorder, or person under other disability, or (3) as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person.

Source: Laws 1917, c. 11, § 1, p. 70; Laws 1919, c. 156, § 1, p. 353; Laws 1921, c. 147, § 1, p. 624; Laws 1921, c. 174, § 1, p. 672; C.S.1922, § 504; Laws 1923, c. 34, § 1, p. 146; Laws 1925, c. 148, § 1, p. 386; Laws 1929, c. 57, § 1, p. 225; C.S.1929, § 24-607; Laws 1935, c. 46, § 1, p. 171; Laws 1937, c. 52, § 1, p. 218; C.S.Supp.,1941, § 24-607; R.S.1943, § 21-610; Laws 1986, LB 1177, § 3; Laws 2013, LB23, § 1.
Effective date September 6, 2013.

ARTICLE 17
CREDIT UNIONS

(a) CREDIT UNION ACT

(a) CREDIT UNION ACT

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2013, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17; Laws 2009, LB327, § 15; Laws 2010, LB890, § 14; Laws 2011, LB74, § 5; Laws 2012, LB963, § 22; Laws 2013, LB213, § 13.
Effective date March 8, 2013.

ARTICLE 26

LIMITED LIABILITY COMPANIES

Section
21-2601. Repealed. Laws 2013, LB 283, § 10.
21-2601.01. Repealed. Laws 2013, LB 283, § 10.
21-2602. Repealed. Laws 2013, LB 283, § 10.
21-2603. Repealed. Laws 2013, LB 283, § 10.
21-2604. Repealed. Laws 2013, LB 283, § 10.
21-2604.01. Repealed. Laws 2013, LB 283, § 10.
21-2605. Repealed. Laws 2013, LB 283, § 10.
21-2606. Repealed. Laws 2013, LB 283, § 10.
21-2607. Repealed. Laws 2013, LB 283, § 10.
21-2608. Repealed. Laws 2013, LB 283, § 10.
21-2609. Repealed. Laws 2013, LB 283, § 10.
21-2610. Repealed. Laws 2013, LB 283, § 10.
21-2611. Repealed. Laws 2013, LB 283, § 10.
21-2612. Repealed. Laws 2013, LB 283, § 10.
21-2613. Repealed. Laws 2013, LB 283, § 10.
21-2614. Repealed. Laws 2013, LB 283, § 10.
21-2615. Repealed. Laws 2013, LB 283, § 10.
21-2616. Repealed. Laws 2013, LB 283, § 10.
21-2617. Repealed. Laws 2013, LB 283, § 10.
21-2617.01. Repealed. Laws 2013, LB 283, § 10.
21-2618. Repealed. Laws 2013, LB 283, § 10.

Section
21-2619. Repealed. Laws 2013, LB 283, § 10.
21-2620. Repealed. Laws 2013, LB 283, § 10.
21-2621. Repealed. Laws 2013, LB 283, § 10.
21-2622. Repealed. Laws 2013, LB 283, § 10.
21-2623. Repealed. Laws 2013, LB 283, § 10.
21-2624. Repealed. Laws 2013, LB 283, § 10.
21-2625. Repealed. Laws 2013, LB 283, § 10.
21-2626. Repealed. Laws 2013, LB 283, § 10.
21-2627. Repealed. Laws 2013, LB 283, § 10.
21-2628. Repealed. Laws 2013, LB 283, § 10.
21-2629. Repealed. Laws 2013, LB 283, § 10.
21-2630. Repealed. Laws 2013, LB 283, § 10.
21-2631. Repealed. Laws 2013, LB 283, § 10.
21-2631.01. Repealed. Laws 2013, LB 283, § 10.
21-2631.02. Repealed. Laws 2013, LB 283, § 10.
21-2631.03. Repealed. Laws 2013, LB 283, § 10.
21-2632. Repealed. Laws 2013, LB 283, § 10.
21-2632.01. Repealed. Laws 2013, LB 283, § 10.
21-2633. Repealed. Laws 2013, LB 283, § 10.
21-2634. Repealed. Laws 2013, LB 283, § 10.
21-2635. Repealed. Laws 2013, LB 283, § 10.
21-2636. Repealed. Laws 2013, LB 283, § 10.
21-2637. Repealed. Laws 2013, LB 283, § 10.
21-2638. Repealed. Laws 2013, LB 283, § 10.
21-2639. Repealed. Laws 2013, LB 283, § 10.
21-2640. Repealed. Laws 2013, LB 283, § 10.
21-2641. Repealed. Laws 2013, LB 283, § 10.
21-2642. Repealed. Laws 2013, LB 283, § 10.
21-2643. Repealed. Laws 2013, LB 283, § 10.
21-2644. Repealed. Laws 2013, LB 283, § 10.
21-2645. Repealed. Laws 2013, LB 283, § 10.
21-2646. Repealed. Laws 2013, LB 283, § 10.
21-2647. Repealed. Laws 2013, LB 283, § 10.
21-2648. Repealed. Laws 2013, LB 283, § 10.
21-2649. Repealed. Laws 2013, LB 283, § 10.
21-2650. Repealed. Laws 2013, LB 283, § 10.
21-2651. Repealed. Laws 2013, LB 283, § 10.
21-2652. Repealed. Laws 2013, LB 283, § 10.
21-2653. Repealed. Laws 2013, LB 283, § 10.
21-2654. Repealed. Laws 2013, LB 283, § 10.

21-2601 Repealed. Laws 2013, LB 283, § 10.

21-2601.01 Repealed. Laws 2013, LB 283, § 10.

21-2602 Repealed. Laws 2013, LB 283, § 10.

21-2603 Repealed. Laws 2013, LB 283, § 10.

21-2604 Repealed. Laws 2013, LB 283, § 10.

21-2604.01 Repealed. Laws 2013, LB 283, § 10.

21-2605 Repealed. Laws 2013, LB 283, § 10.

21-2606 Repealed. Laws 2013, LB 283, § 10.

21-2607 Repealed. Laws 2013, LB 283, § 10.

21-2608 Repealed. Laws 2013, LB 283, § 10.

21-2609 Repealed. Laws 2013, LB 283, § 10.

21-2610 Repealed. Laws 2013, LB 283, § 10.

21-2611 Repealed. Laws 2013, LB 283, § 10.

21-2612 Repealed. Laws 2013, LB 283, § 10.

21-2613 Repealed. Laws 2013, LB 283, § 10.

21-2614 Repealed. Laws 2013, LB 283, § 10.

21-2615 Repealed. Laws 2013, LB 283, § 10.

21-2616 Repealed. Laws 2013, LB 283, § 10.

21-2617 Repealed. Laws 2013, LB 283, § 10.

21-2617.01 Repealed. Laws 2013, LB 283, § 10.

21-2618 Repealed. Laws 2013, LB 283, § 10.

21-2619 Repealed. Laws 2013, LB 283, § 10.

21-2620 Repealed. Laws 2013, LB 283, § 10.

21-2621 Repealed. Laws 2013, LB 283, § 10.

21-2622 Repealed. Laws 2013, LB 283, § 10.

21-2623 Repealed. Laws 2013, LB 283, § 10.

21-2624 Repealed. Laws 2013, LB 283, § 10.

21-2625 Repealed. Laws 2013, LB 283, § 10.

21-2626 Repealed. Laws 2013, LB 283, § 10.

21-2627 Repealed. Laws 2013, LB 283, § 10.

21-2628 Repealed. Laws 2013, LB 283, § 10.

21-2629 Repealed. Laws 2013, LB 283, § 10.

21-2630 Repealed. Laws 2013, LB 283, § 10.

21-2631 Repealed. Laws 2013, LB 283, § 10.

21-2631.01 Repealed. Laws 2013, LB 283, § 10.

21-2631.02 Repealed. Laws 2013, LB 283, § 10.

21-2631.03 Repealed. Laws 2013, LB 283, § 10.

21-2632 Repealed. Laws 2013, LB 283, § 10.

21-2632.01 Repealed. Laws 2013, LB 283, § 10.

21-2633 Repealed. Laws 2013, LB 283, § 10.

21-2634 Repealed. Laws 2013, LB 283, § 10.

21-2635 Repealed. Laws 2013, LB 283, § 10.

21-2636 Repealed. Laws 2013, LB 283, § 10.

21-2637 Repealed. Laws 2013, LB 283, § 10.

21-2638 Repealed. Laws 2013, LB 283, § 10.

21-2639 Repealed. Laws 2013, LB 283, § 10.

21-2640 Repealed. Laws 2013, LB 283, § 10.

21-2641 Repealed. Laws 2013, LB 283, § 10.

21-2642 Repealed. Laws 2013, LB 283, § 10.

21-2643 Repealed. Laws 2013, LB 283, § 10.

21-2644 Repealed. Laws 2013, LB 283, § 10.

21-2645 Repealed. Laws 2013, LB 283, § 10.

21-2646 Repealed. Laws 2013, LB 283, § 10.

21-2647 Repealed. Laws 2013, LB 283, § 10.

21-2648 Repealed. Laws 2013, LB 283, § 10.

21-2649 Repealed. Laws 2013, LB 283, § 10.

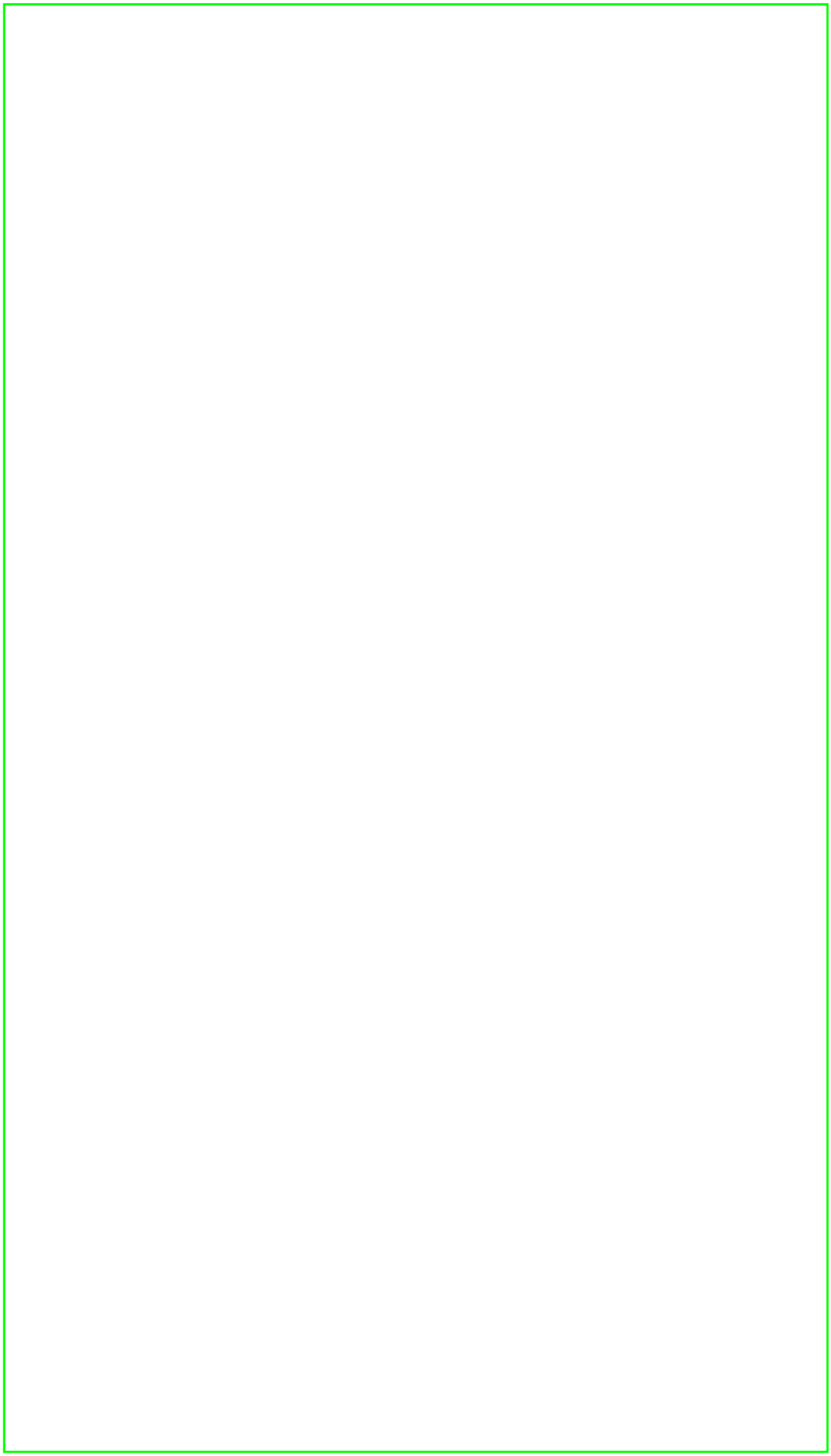
21-2650 Repealed. Laws 2013, LB 283, § 10.

21-2651 Repealed. Laws 2013, LB 283, § 10.

21-2652 Repealed. Laws 2013, LB 283, § 10.

21-2653 Repealed. Laws 2013, LB 283, § 10.

21-2654 Repealed. Laws 2013, LB 283, § 10.



CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

ARTICLE 1
GENERAL PROVISIONS

(a) CORPORATE POWERS

(a) CORPORATE POWERS

23-104.03 Power to provide protective services.

Each county shall have the authority (1) to plan, initiate, fund, maintain, administer, and evaluate facilities, programs, and services that meet the rehabilitation, treatment, care, training, educational, residential, diagnostic, evaluation, community supervision, and protective service needs of dependent, aged, blind, disabled, ill, or infirm persons, persons with a mental disorder, and persons with an intellectual disability domiciled in the county, (2) to purchase outright by installment contract or by mortgage with the power to borrow funds in connection with such contract or mortgage, hold, sell, and lease for a period of more than one year real estate necessary for use of the county to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, (3) to lease personal property necessary for such facilities, programs, and services, and such lease may provide for installment payments which extend over a period of more than one year, notwithstanding the provisions of section 23-132 or 23-916, (4) to enter into compacts with other counties, state agencies, other political subdivisions, and private nonprofit agencies to exercise and carry out the powers to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, and (5) to contract for such services from agencies, either public or private, which provide such services on a vendor basis. Compacts with other public agencies pursuant to subdivision (4) of this section shall be subject to the Interlocal Cooperation Act.

Source: Laws 1971, LB 599, § 1; Laws 1972, LB 1266, § 1; Laws 1985, LB 393, § 15; Laws 1986, LB 1177, § 4; Laws 2013, LB23, § 2. Effective date September 6, 2013.

Cross References

Interlocal Cooperation Act, see section 13-801.

ARTICLE 23
COUNTY EMPLOYEES RETIREMENT

23-2301 Terms, defined.

For purposes of the County Employees Retirement Act, unless the context otherwise requires:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of an annuity payment. The mortality assumption used for purposes of converting the member cash balance account shall be the 1994 Group Annuity Mortality Table using a unisex rate that is fifty percent male and fifty percent female. For purposes of converting the member cash balance account attributable to contributions made prior to January 1, 1984, that were transferred pursuant to the act, the 1994 Group Annuity Mortality Table for males shall be used;

(2) Annuity means equal monthly payments provided by the retirement system to a member or beneficiary under forms determined by the board beginning the first day of the month after an annuity election is received in the office of the Nebraska Public Employees Retirement Systems or the first day of the month after the employee's termination of employment, whichever is later. The last payment shall be at the end of the calendar month in which the member dies or in accordance with the payment option chosen by the member;

(3) Annuity start date means the date upon which a member's annuity is first effective and shall be the first day of the month following the member's termination or following the date the application is received by the board, whichever is later;

(4) Cash balance benefit means a member's retirement benefit that is equal to an amount based on annual employee contribution credits plus interest credits and, if vested, employer contribution credits plus interest credits and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(5)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year. Compensation does not include insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not

actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(6) Date of adoption of the retirement system by each county means the first day of the month next following the date of approval of the retirement system by the county board or January 1, 1987, whichever is earlier;

(7) Date of disability means the date on which a member is determined by the board to be disabled;

(8) Defined contribution benefit means a member's retirement benefit from a money purchase plan in which member benefits equal annual contributions and earnings pursuant to section 23-2309 and, if vested, employer contributions and earnings pursuant to section 23-2310;

(9) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(10) Employee means all persons or officers who are employed by a county of the State of Nebraska on a permanent basis, persons or officers employed by or serving in a municipal county formed by at least one county participating in the retirement system, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers as are classified from time to time as permanent employees by the county board of the county by which they are employed, except that employee does not include judges, employees or officers of any county having a population in excess of two hundred thousand inhabitants as determined by the most recent federal decennial census, or, except as provided in section 23-2306, persons making contributions to the School Employees Retirement System of the State of Nebraska;

(11) Employee contribution credit means an amount equal to the member contribution amount required by section 23-2307;

(12) Employer contribution credit means an amount equal to the employer contribution amount required by section 23-2308;

(13) Final account value means the value of a member's account on the date the account is either distributed to the member or used to purchase an annuity from the plan, which date shall occur as soon as administratively practicable after receipt of a valid application for benefits, but no sooner than forty-five days after the member's termination;

(14) Five-year break in service means a period of five consecutive one-year breaks in service;

(15) Full-time employee means an employee who is employed to work one-half or more of the regularly scheduled hours during each pay period;

(16) Future service means service following the date of adoption of the retirement system;

(17) Guaranteed investment contract means an investment contract or account offering a return of principal invested plus interest at a specified rate. For investments made after July 19, 1996, guaranteed investment contract does not include direct obligations of the United States or its instrumentalities, bonds, participation certificates or other obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association, or collateralized mortgage obligations and other derivative securities. This subdivision shall not be construed to require the liquidation of investment contracts or accounts entered into prior to July 19, 1996;

(18) Interest credit rate means the greater of (a) five percent or (b) the applicable federal mid-term rate, as published by the Internal Revenue Service as of the first day of the calendar quarter for which interest credits are credited, plus one and one-half percent, such rate to be compounded annually;

(19) Interest credits means the amounts credited to the employee cash balance account and the employer cash balance account at the end of each day. Such interest credit for each account shall be determined by applying the daily portion of the interest credit rate to the account balance at the end of the previous day. Such interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account after a member ceases to be an employee, except that no such credit shall be made with respect to the employee cash balance account and the employer cash balance account for any day beginning on or after the member's date of final account value. If benefits payable to the member's surviving spouse or beneficiary are delayed after the member's death, interest credits shall continue to be credited to the employee cash balance account and the employer cash balance account until such surviving spouse or beneficiary commences receipt of a distribution from the plan;

(20) Member cash balance account means an account equal to the sum of the employee cash balance account and, if vested, the employer cash balance account and dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317;

(21) One-year break in service means a plan year during which the member has not completed more than five hundred hours of service;

(22) Participation means qualifying for and making the required deposits to the retirement system during the course of a plan year;

(23) Part-time employee means an employee who is employed to work less than one-half of the regularly scheduled hours during each pay period;

(24) Plan year means the twelve-month period beginning on January 1 and ending on December 31;

(25) Prior service means service prior to the date of adoption of the retirement system;

(26) Regular interest means the rate of interest earned each calendar year as determined by the retirement board in conformity with actual and expected earnings on the investments through December 31, 1985;

(27) Required contribution means the deduction to be made from the compensation of employees as provided in the act;

(28) Retirement means qualifying for and accepting the retirement benefit granted under the act after terminating employment;

(29) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(30) Retirement board or board means the Public Employees Retirement Board;

(31) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(32) Retirement system means the Retirement System for Nebraska Counties;

(33) Service means the actual total length of employment as an employee and is not deemed to be interrupted by (a) temporary or seasonal suspension of service that does not terminate the employee's employment, (b) leave of absence authorized by the employer for a period not exceeding twelve months, (c) leave of absence because of disability, or (d) military service, when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under section 23-2315;

(34) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(35) Termination of employment occurs on the date on which a county which is a member of the retirement system determines that its employer-employee relationship with an employee is dissolved. The county shall notify the board of the date on which such a termination has occurred. Termination of employment does not occur if an employee whose employer-employee relationship with a county is dissolved enters into an employer-employee relationship with the same or another county which participates in the Retirement System for Nebraska Counties and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased with the county and the date when the employer-employee relationship commenced with the same or another county which qualifies the employee for participation in the plan. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 23-2319, the board shall require the member who has received such benefit to repay the benefit to the retirement system; and

(36) Vesting credit means credit for years, or a fraction of a year, of participation in another Nebraska governmental plan for purposes of determining vesting of the employer account.

Source: Laws 1965, c. 94, § 1, p. 402; Laws 1969, c. 172, § 1, p. 750; Laws 1973, LB 216, § 1; Laws 1974, LB 905, § 1; Laws 1975, LB 47, § 1; Laws 1975, LB 45, § 1; Laws 1984, LB 216, § 2; Laws 1985, LB 347, § 1; Laws 1985, LB 432, § 1; Laws 1986, LB 311, § 2; Laws 1991, LB 549, § 1; Laws 1993, LB 417, § 1; Laws 1994, LB 833, § 1; Laws 1995, LB 369, § 2; Laws 1996, LB 847, § 2; Laws 1996, LB 1076, § 1; Laws 1996, LB 1273, § 14; Laws 1997, LB 624, § 1; Laws 1998, LB 1191, § 23; Laws 1999, LB 703, § 1; Laws 2000, LB 1192, § 1; Laws 2001, LB 142, § 32; Laws 2002, LB 407, § 1; Laws 2002, LB 687, § 3; Laws 2003, LB 451, § 2; Laws 2004, LB 1097, § 2; Laws 2006, LB 366, § 2; Laws 2006, LB 1019, § 1; Laws 2011, LB509, § 2; Laws 2012, LB916, § 4; Laws 2013, LB263, § 2.
Effective date April 25, 2013.

Cross References

Spousal Pension Rights Act, see section 42-1101.

23-2306 Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system within the first thirty days of employment, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system within thirty days after taking office. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4) On and after July 1, 2013, the board may determine that a governmental entity currently participating in the retirement system no longer qualifies under section 414(d) of the Internal Revenue Code as a participating employer in a governmental plan. Upon such determination, affected plan members shall be considered fully vested. The board shall notify such entity within ten days after making a determination. Within ninety days after the board's notice to such

entity, affected plan members shall become inactive. The board may adopt and promulgate rules and regulations to carry out this subsection.

(5) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(6) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(7) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(8) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(9) A full-time or part-time employee of the state who becomes a county employee pursuant to transfer of assessment function to a county under section 77-1340 or 77-1340.04 shall not be deemed to have experienced a termination of employment and shall receive vesting credit for his or her years of participation in the State Employees Retirement System of the State of Nebraska.

(10) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB1147, § 1; Laws 2009, LB188, § 1; Laws 2010, LB950, § 1; Laws 2011, LB509, § 4; Laws 2013, LB263, § 3.
Effective date April 25, 2013.

23-2307 Retirement system; members; contribution; amount; county pay.

Each employee who is a member of the retirement system shall pay to the county or have picked up by the county a sum equal to four and one-half percent of his or her compensation for each pay period. The contributions, although designated as employee contributions, shall be paid by the county in lieu of employee contributions. The county shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the employee until such time as they are distributed or made available. The county shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The county shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the employee. Employee contributions picked up shall be treated for all purposes of the County Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

Source: Laws 1965, c. 94, § 7, p. 405; Laws 1981, LB 459, § 1; Laws 1984, LB 218, § 1; Laws 1985, LB 347, § 4; Laws 1991, LB 549, § 4; Laws 1992, LB 1057, § 1; Laws 1995, LB 574, § 31; Laws 2001, LB 186, § 1; Laws 2001, LB 408, § 1; Laws 2013, LB263, § 4.
Effective date April 25, 2013.

23-2310.04 County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment; forfeiture funds; use.

(1) The County Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The County Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) Forfeiture funds collected from members participating in the defined contribution benefit shall be used to either pay expenses or reduce employer contributions related to the defined contribution benefit. Any unused funds shall be allocated as earnings of and transferred to the accounts of the

remaining members within twelve months after receipt of the funds by the board.

Source: Laws 1997, LB 623, § 2; Laws 2000, LB 1200, § 2; Laws 2001, LB 408, § 3; Laws 2003, LB 451, § 5; Laws 2005, LB 364, § 3; Laws 2007, LB328, § 2; Laws 2010, LB950, § 4; Laws 2013, LB263, § 5.
Effective date April 25, 2013.

Cross References

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

23-2315 Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties; certain required minimum distributions; election authorized.

(1) Upon filing an application for benefits with the board, an employee may elect to retire at any time after attaining the age of fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the County Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the county.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(5) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

Source: Laws 1965, c. 94, § 15, p. 407; Laws 1975, LB 47, § 2; Laws 1979, LB 391, § 1; Laws 1982, LB 287, § 1; Laws 1986, LB 311, § 5; Laws 1987, LB 60, § 1; Laws 1987, LB 296, § 1; Laws

1994, LB 833, § 7; Laws 1996, LB 1076, § 3; Laws 2003, LB 451, § 6; Laws 2009, LB188, § 3; Laws 2013, LB263, § 6. Effective date April 25, 2013.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

23-2317 Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information; certain required minimum distributions; election authorized.

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 23-2316 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 23-2316 except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 23-2308.01, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be

considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

(6) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

Source: Laws 1965, c. 94, § 17, p. 407; Laws 1979, LB 416, § 2; Laws 1981, LB 462, § 2; Laws 1983, LB 210, § 1; Laws 1985, LB 347, § 8; Laws 1986, LB 311, § 6; Laws 1987, LB 60, § 2; Laws 1992, LB 543, § 1; Laws 1993, LB 417, § 3; Laws 1996, LB 1273, § 15; Laws 2002, LB 687, § 12; Laws 2003, LB 451, § 8; Laws 2006, LB 1019, § 4; Laws 2007, LB328, § 3; Laws 2009, LB188, § 4; Laws 2012, LB916, § 9; Laws 2013, LB263, § 7. Effective date April 25, 2013.

23-2319 Termination of employment; termination benefit; vesting; certain required minimum distributions; election authorized.

(1) Except as provided in section 42-1107, upon termination of employment, except for retirement or disability, and after filing an application with the board, a member may receive:

(a) If not vested, a termination benefit equal to the amount of his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount of his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the county and no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 23-2306, including vesting credit. If an employee retires pursuant to section 23-2315, such employee shall be fully vested in the retirement system.

(4) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary choos-

es not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

Source: Laws 1965, c. 94, § 19, p. 408; Laws 1975, LB 32, § 3; Laws 1975, LB 47, § 4; Laws 1984, LB 216, § 4; Laws 1986, LB 311, § 7; Laws 1987, LB 60, § 3; Laws 1991, LB 549, § 11; Laws 1993, LB 417, § 4; Laws 1994, LB 1306, § 1; Laws 1996, LB 1076, § 4; Laws 1996, LB 1273, § 16; Laws 1997, LB 624, § 4; Laws 1998, LB 1191, § 28; Laws 2002, LB 687, § 13; Laws 2003, LB 451, § 9; Laws 2006, LB 366, § 6; Laws 2009, LB188, § 5; Laws 2013, LB263, § 8.
Effective date April 25, 2013.

23-2319.01 Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; use; investment.

(1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the County Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to restore employer accounts or employer cash balance accounts. Except as provided in subsection (3) of section 23-2310.04 and subdivision (4)(c) of section 23-2317, no forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(2)(a) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account and, except as provided in subdivision (b) of this subsection, transactions for payment of benefits under sections 23-2315 and 23-2319 shall be suspended pending the final outcome of the grievance or other appeal.

(b) If a member elects to receive benefits payable under sections 23-2315 and 23-2319 after a grievance or appeal is filed, the member may receive an amount up to the balance of his or her employee account or member cash balance account or twenty-five thousand dollars payable from the employee account or member cash balance account, whichever is less.

(3) The County Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. Prior to July 1, 2012, the County Employer Retirement Expense Fund shall be used to meet expenses of the retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or County Employees Cash Balance Retirement Expense Fund make such use reasonably necessary. The County Employer Retirement Expense Fund shall consist of any

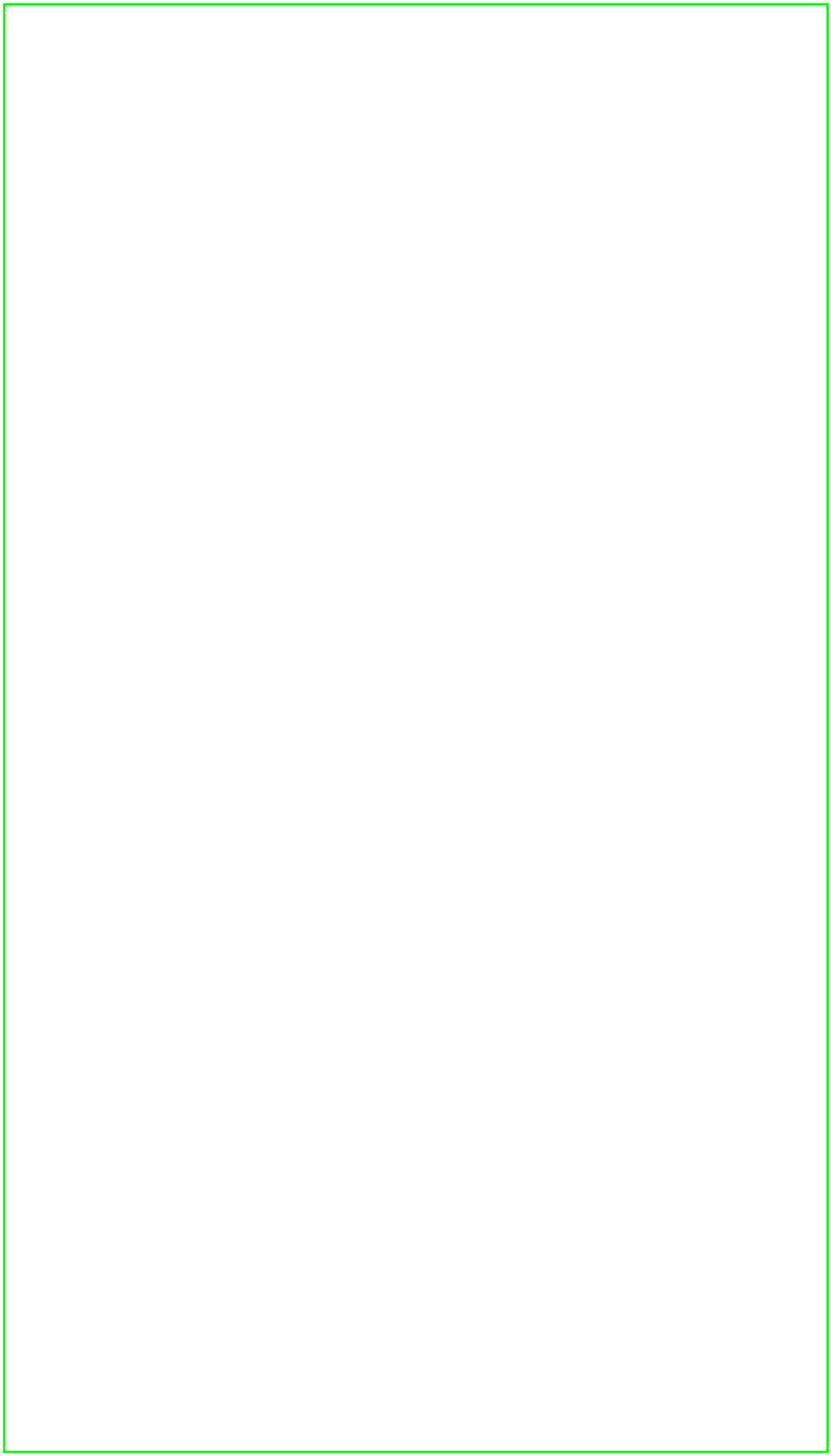
reduction in a county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. On July 1, 2012, or as soon as practicable thereafter, any money in the County Employer Retirement Expense Fund shall be transferred by the State Treasurer to the County Employees Retirement Fund and credited to the cash balance benefit established in section 23-2308.01.

(4) Prior to July 1, 2012, expenses incurred as a result of a county depositing amounts into the County Employer Retirement Expense Fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with subsection (3) of this section. Any money in the County Employer Retirement Expense Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 624, § 5; Laws 2000, LB 1200, § 4; Laws 2002, LB 687, § 14; Laws 2003, LB 451, § 10; Laws 2005, LB 364, § 5; Laws 2007, LB328, § 4; Laws 2011, LB509, § 7; Laws 2012, LB916, § 10; Laws 2013, LB263, § 9.
Effective date April 25, 2013.

Cross References

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



CHAPTER 24
COURTS

Article.
2. Supreme Court.
(a) Organization. 24-201.01.
7. Judges, General Provisions.
(a) Judges Retirement. 24-701 to 24-710.13.
(d) General Powers. 24-734.

ARTICLE 2
SUPREME COURT

(a) ORGANIZATION

Section
24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.

(a) ORGANIZATION

24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges.

On July 1, 2012, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred forty-five thousand six hundred fourteen dollars and seventy-four cents. On July 1, 2013, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred fifty-two thousand eight hundred ninety-five dollars and forty-eight cents. On July 1, 2014, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred sixty thousand five hundred forty dollars and twenty-five cents.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

Source: Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws 1963, c. 127, § 1, p. 480; Laws 1963, c. 534, § 1, p. 1676; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws 1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350, § 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1; Laws 2012, LB862, § 1; Laws 2013, LB306, § 1.
Operative date July 1, 2013.

ARTICLE 7
JUDGES, GENERAL PROVISIONS

(a) JUDGES RETIREMENT

(d) GENERAL POWERS

(a) JUDGES RETIREMENT

24-701 Terms, defined.

For purposes of the Judges Retirement Act, unless the context otherwise requires:

(1) Fund means the Nebraska Retirement Fund for Judges;

(2) Judge means and includes (a) all duly elected or appointed Chief Justices or judges of the Supreme Court and judges of the district courts of Nebraska who serve in such capacity on and after January 3, 1957, (b)(i) all duly appointed judges of the Nebraska Workmen's Compensation Court who served in such capacity on and after September 20, 1957, and prior to July 17, 1986, and (ii) judges of the Nebraska Workers' Compensation Court who serve in such capacity on and after July 17, 1986, (c) judges of separate juvenile courts, (d) judges of the county courts of the respective counties who serve in such capacity on and after January 5, 1961, (e) judges of the county court and clerk magistrates who were associate county judges and members of the fund at the time of their appointment as clerk magistrates, (f) judges of municipal courts established by Chapter 26, article 1, who served in such capacity on and after October 23, 1967, and prior to July 1, 1985, and (g) judges of the Court of Appeals;

(3) Prior service means all the periods of time any person has served as a (a) judge of the Supreme Court or judge of the district court prior to January 3, 1957, (b) judge of the county court prior to January 5, 1961, (c) judge of the Nebraska Workmen's Compensation Court prior to September 20, 1957, (d) judge of the separate juvenile court, or (e) judge of the municipal court prior to October 23, 1967;

(4)(a) Current service means the period of service (i) any judge of the Supreme Court or judge of the district court serves in such capacity from and after January 3, 1957, (ii)(A) any judge of the Nebraska Workmen's Compensation Court served in such capacity from and after September 20, 1957, and prior to July 17, 1986, and (B) any judge of the Nebraska Workers' Compensation Court serves in such capacity on and after July 17, 1986, (iii) any county judge serves in such capacity from and after January 5, 1961, (iv) any judge of a separate juvenile court serves in such capacity, (v) any judge of the municipal court served in such capacity subsequent to October 23, 1967, and prior to July 1, 1985, (vi) any judge of the county court or associate county judge serves in such capacity subsequent to January 4, 1973, (vii) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, serves in such capacity from and after July

1, 1986, and (viii) any judge of the Court of Appeals serves in such capacity on or after September 6, 1991.

(b) Current service shall not be deemed to be interrupted by (i) temporary or seasonal suspension of service that does not terminate the employee's employment, (ii) leave of absence authorized by the employer for a period not exceeding twelve months, (iii) leave of absence because of disability, or (iv) military service, when properly authorized by the board. Current service does not include any period of disability for which disability retirement benefits are received under section 24-709;

(5) Military service means active service of (a) any judge of the Supreme Court or judge of the district court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 18, 1955, if such service commenced while such judge was holding the office of judge, (b) any judge of the Nebraska Workmen's Compensation Court or the Nebraska Workers' Compensation Court in any of the armed forces of the United States during a war or national emergency prior or subsequent to September 20, 1957, if such service commenced while such judge was holding the office of judge, (c) any judge of the municipal court in any of the armed forces of the United States during a war or national emergency prior or subsequent to October 23, 1967, and prior to July 1, 1985, if such service commenced while such judge was holding the office of judge, (d) any judge of the county court or associate county judge in any of the armed forces of the United States during a war or national emergency prior or subsequent to January 4, 1973, if such service commenced while such judge was holding the office of judge, (e) any clerk magistrate, who was an associate county judge and a member of the fund at the time of appointment as a clerk magistrate, in any of the armed forces of the United States during a war or national emergency on or after July 1, 1986, if such service commenced while such clerk magistrate was holding the office of clerk magistrate, and (f) any judge of the Court of Appeals in any of the armed forces of the United States during a war or national emergency on or after September 6, 1991, if such service commenced while such judge was holding the office of judge. The board shall have the power to determine when a national emergency exists or has existed for the purpose of applying this definition and provision;

(6) Creditable service means the total number of years served as a judge, including prior service, military service, and current service, computed to the nearest one-twelfth year. For current service prior to the time that the member has contributed the required percentage of salary until the maximum benefit as limited by section 24-710 has been earned, creditable service does not include current service for which member contributions are not made or are withdrawn and not repaid;

(7)(a) Compensation means the statutory salary of a judge or the salary being received by such judge pursuant to law. Compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, per diems, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the

Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(8) Beneficiary means a person so designated by a judge in the last designation of beneficiary on file with the board or, if no designated person survives or if no designation is on file, the estate of such judge;

(9) Normal form annuity means a series of equal monthly payments payable at the end of each calendar month during the life of a retired judge as provided in sections 24-707 and 24-710, except as provided in section 42-1107. The first payment shall include all amounts accrued since the effective date of the award of the annuity. The last payment shall be at the end of the calendar month in which such judge dies. If at the time of death the amount of annuity payments such judge has received is less than contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate;

(10) Board means the Public Employees Retirement Board;

(11) Member means a judge eligible to participate in the retirement system established under the Judges Retirement Act;

(12) Original member means a judge who first served as a judge prior to December 25, 1969, who does not elect to become a future member pursuant to subsection (8) of section 24-703 or section 24-710.01, and who was retired on or before December 31, 1992;

(13) Future member means a judge who first served as a judge on or after December 25, 1969, or means a judge who first served as a judge prior to December 25, 1969, who elects to become a future member on or before June 30, 1970, as provided in subsection (8) of section 24-703 or section 24-710.01;

(14) Final average compensation means the average monthly compensation for the three twelve-month periods of service as a judge in which compensation was the greatest or, in the event of a judge serving less than three twelve-month periods, the average monthly compensation for such judge's period of service;

(15) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(16) Normal retirement date means the first day of the month following attainment of age sixty-five;

(17) Actuarial equivalence means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations are to be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations;

(18) Current benefit means the initial benefit increased by all adjustments made pursuant to the Judges Retirement Act;

(19) Initial benefit means the retirement benefit calculated at the time of retirement;

(20) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(21) Retirement application means the form approved and provided by the retirement system for acceptance of a member's request for either regular or disability retirement;

(22) Retirement date means (a) the first day of the month following the date upon which a member's request for retirement is received on a retirement application if the member is eligible for retirement and has terminated employment or (b) the first day of the month following termination of employment if the member is eligible for retirement and has filed an application but has not yet terminated employment;

(23) Retirement system or system means the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(24) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under the qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits; and

(25) Termination of employment occurs on the date on which the State Court Administrator's office determines that the judge's employer-employee relationship with the State of Nebraska is dissolved. The State Court Administrator's office shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment as a judge if the judge returns to regular employment as a judge or is employed on a regular basis by another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the judge's employer-employee relationship ceased and the date when the employer-employee relationship recommences. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 24-710, the board shall require the member who has received such benefit to repay the benefit to the retirement system.

Source: Laws 1955, c. 83, § 1, p. 244; Laws 1957, c. 78, § 1, p. 315; Laws 1957, c. 79, § 1, p. 318; Laws 1959, c. 95, § 1, p. 409; Laws 1959, c. 189, § 13, p. 687; Laws 1965, c. 115, § 1, p. 440; Laws 1969, c. 178, § 1, p. 759; Laws 1971, LB 987, § 4; Laws 1972, LB 1032, § 120; Laws 1973, LB 226, § 10; Laws 1974, LB 905, § 3; Laws 1983, LB 223, § 1; Laws 1984, LB 13, § 32; Laws 1984, LB 750, § 1; Laws 1986, LB 92, § 1; Laws 1986, LB 311, § 9; Laws 1986, LB 351, § 1; Laws 1986, LB 529, § 17;

Laws 1986, LB 811, § 12; Laws 1989, LB 506, § 2; Laws 1991, LB 549, § 15; Laws 1991, LB 732, § 36; Laws 1992, LB 682, § 1; Laws 1994, LB 833, § 12; Laws 1996, LB 700, § 1; Laws 1996, LB 847, § 11; Laws 1996, LB 1076, § 8; Laws 1996, LB 1273, § 19; Laws 1997, LB 624, § 9; Laws 1999, LB 674, § 1; Laws 2000, LB 1192, § 4; Laws 2001, LB 408, § 6; Laws 2003, LB 451, § 14; Laws 2011, LB6, § 1; Laws 2012, LB916, § 14; Laws 2013, LB263, § 10.
Effective date April 25, 2013.

Cross References

Spousal Pension Rights Act, see section 42-1101.

24-703 Judges; contributions; payment; funding of system; late fees.

(1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2)(a) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, each future member who has not elected to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such future member shall make no further contributions to the fund, except that (i) any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned and (ii) such future member shall continue to make the contribution required under subdivision (c) of this subsection.

(b) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, a judge who first serves as a judge on or after such date or a future member who elects to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited by subsection (2) of section 24-710 has been earned. In addition to the contribution required under subdivision (c) of this subsection,

after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such judge or future member shall contribute monthly four percent of his or her monthly compensation to the fund for the remainder of his or her active service.

(c) Beginning on July 1, 2009, a member or judge described in subdivisions (a) and (b) of this subsection shall contribute monthly an additional one percent of his or her monthly compensation to the fund.

(d) It shall be the duty of the Director of Administrative Services to make a deduction on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) Except as otherwise provided in this subsection, a Nebraska Retirement Fund for Judges fee of six dollars shall be taxed as costs in each (a) civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts, the county courts, and the separate juvenile courts, (b) filing in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court or any judge thereof pursuant to section 48-188, (c) appeal or other proceeding filed in the Court of Appeals, and (d) original action, appeal, or other proceeding filed in the Supreme Court. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06, rounded to the nearest even dollar. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid and information submitted to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten days after the close of each calendar quarter. The board may charge a late administrative processing fee not to exceed twenty-five dollars if the information is not timely received or the money is delinquent. In addition, the board may charge a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. Such director shall promptly thereafter remit the same to the State Treasurer for credit to the fund. No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court

fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section and fees pursuant to sections 25-2804, 33-103, 33-103.01, 33-106, 33-106.02, 33-123, 33-125, 33-126.02, 33-126.03, and 33-126.06 and directed to be remitted to the fund, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. For the fiscal year beginning July 1, 2013, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level percentage of salary basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(10) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Internal Revenue Code in determining federal tax treatment under the code and shall not be included as gross income of the

member until such time as they are distributed or made available. The contributions, although designated as member contributions, shall be paid by the state or county in lieu of member contributions. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Source: Laws 1955, c. 83, § 3, p. 246; Laws 1957, c. 79, § 2, p. 321; Laws 1959, c. 95, § 2, p. 411; Laws 1959, c. 189, § 14, p. 689; Laws 1963, c. 137, § 1, p. 513; Laws 1965, c. 115, § 2, p. 442; Laws 1965, c. 116, § 2, p. 446; Laws 1967, c. 140, § 1, p. 428; Laws 1969, c. 178, § 2, p. 957; Laws 1971, LB 987, § 5; Laws 1972, LB 1032, § 121; Laws 1972, LB 1471, § 1; Laws 1973, LB 226, § 11; Laws 1974, LB 228, § 1; Laws 1977, LB 344, § 2; Laws 1977, LB 467, § 1; Laws 1981, LB 459, § 3; Laws 1984, LB 13, § 33; Laws 1984, LB 218, § 2; Laws 1986, LB 92, § 2; Laws 1986, LB 529, § 18; Laws 1989, LB 233, § 1; Laws 1989, LB 506, § 3; Laws 1991, LB 549, § 16; Laws 1991, LB 732, § 37; Laws 1992, LB 672, § 31; Laws 1992, LB 682, § 2; Laws 1994, LB 833, § 14; Laws 1995, LB 574, § 34; Laws 2001, LB 408, § 9; Laws 2002, LB 407, § 13; Laws 2003, LB 320, § 1; Laws 2003, LB 760, § 4; Laws 2004, LB 1097, § 11; Laws 2005, LB 348, § 2; Laws 2005, LB 364, § 7; Laws 2006, LB 1019, § 5; Laws 2009, LB414, § 2; Laws 2013, LB263, § 11; Laws 2013, LB306, § 2; Laws 2013, LB553, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB263, section 11, with LB306, section 2, and LB553, section 1, to reflect all amendments.

Note: Changes made by LB263 became effective April 25, 2013. Changes made by LB306 and LB553 became operative July 1, 2013.

24-710.13 Annual benefit adjustment; cost-of-living adjustment calculation method.

(1) Beginning July 1, 2011, and each July 1 thereafter, the board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subsection (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section.

(2) The current benefit paid to a retired member or beneficiary under this subsection shall be adjusted so that the purchasing power of the benefit being paid is not less than seventy-five percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the

current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by seventy-five percent. In any year in which applying the adjustment provided in subsection (3) of this section results in a benefit which would be less than seventy-five percent of the purchasing power of the initial benefit as calculated in this subsection, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year.

(3) The current benefit paid to a retired member or beneficiary under this subsection shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent.

(4)(a) The current benefit paid to a retired member or beneficiary under this subsection shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method provided in this subsection, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 24-709, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 24-707 or 24-707.01 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subsection.

(c) The monthly accrual rate under this subsection is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subsection is the total benefit received by a retired member or beneficiary pursuant to the Judges Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) Beginning July 1, 2010, the minimum accrual rate under this subsection was forty-six dollars and eighty-five cents. Beginning July 1, 2011, the minimum accrual rate under this subsection was forty-eight dollars and seventy-five cents. Beginning July 1, 2012, the minimum accrual rate under this subsection was forty-nine dollars and fifty-two cents. Beginning July 1, 2013, the board shall annually adjust the minimum accrual rate to reflect the cumulative

percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate.

(5) Beginning July 1, 2011, and each July 1 thereafter, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first.

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

Source: Laws 2011, LB509, § 10; Laws 2013, LB263, § 12; Laws 2013, LB306, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB263, section 12, with LB306, section 3, to reflect all amendments.

Note: Changes made by LB263 became effective April 25, 2013. Changes made by LB306 became operative July 1, 2013.

(d) GENERAL POWERS

24-734 Judges; powers; enumerated.

(1) A judge of any court established under the laws of the State of Nebraska shall, in any case in which that judge is authorized to act, have power to exercise the powers conferred upon the judge and court, and specifically to:

(a) Upon the stipulation of the parties to an action, hear and determine any matter, including the trial of an equity case or case at law in which a jury has been waived;

(b) Hear and determine pretrial and posttrial matters in civil cases not involving testimony of witnesses by oral examination;

(c) With the consent of the defendant, receive pleas of guilty and pass sentences in criminal cases;

(d) With the consent of the defendant, hear and determine pretrial and posttrial matters in criminal cases;

(e) Hear and determine cases brought by petition in error or appeal not involving testimony of witnesses by oral examination;

(f) Hear and determine any matter in juvenile cases with the consent of the guardian ad litem or attorney for the minor, the other parties to the proceedings, and the attorneys for those parties, if any; and

(g) Without notice, make any order and perform any act which may lawfully be made or performed by him or her ex parte in any action or proceeding which is on file in any district of this state.

(2) A judgment or order made pursuant to this section shall be deemed effective when the judgment is entered in accordance with the provisions of subsection (3) of section 25-1301.

(3) The judge, in his or her discretion, may in any proceeding authorized by the provisions of this section not involving testimony of witnesses by oral examination, use telephonic, videoconferencing, or similar methods to conduct such proceedings. The court may require the parties to make reimbursement for any charges incurred.

(4) A judge, in any case with the consent of the parties, may permit any witness who is to be examined by oral examination to appear by telephonic, videoconferencing, or similar methods, with any costs thereof to be taxed as costs.

(5) The enumeration of the powers in subsections (1), (2), (3), and (4) of this section shall not be construed to deny the right of a party to trial by jury in the county in which the action was first filed if such right otherwise exists.

(6) Nothing in this section shall be construed to exempt proceedings under this section from the provisions of the Guidelines for Use by Nebraska Courts in Determining When and Under What Conditions a Hearing Before Such Court May Be Closed in Whole or in Part to the Public, adopted by the Supreme Court of the State of Nebraska September 8, 1980, and any amendments to those provisions.

Source: Laws 1879, § 39, p. 90; Laws 1913, c. 209, § 1, p. 635; R.S.1913, § 1176; Laws 1921, c. 177, § 1, p. 676; C.S.1922, § 1099; C.S.1929, § 27-317; R.S.1943, § 24-317; Laws 1953, c. 64, § 1, p. 208; Laws 1965, c. 111, § 1, p. 435; R.S.1943, (1979), § 24-317; Laws 1983, LB 272, § 1; Laws 1999, LB 43, § 1; Laws 2013, LB103, § 1.
Effective date September 6, 2013.

CHAPTER 25
COURTS; CIVIL PROCEDURE

ARTICLE 16
JURY

25-1625 Jury commissioner; designation; salary; expenses; duties.

(1) In each county of the State of Nebraska there shall be a jury commissioner.

(2) In counties having a population of not more than seventy-five thousand inhabitants, the clerk of the district court shall be jury commissioner ex officio.

(3) In counties having a population of more than seventy-five thousand, and not more than two hundred thousand inhabitants, the jury commissioner shall be a separate office in the county government or the duties may be performed, when authorized by the judges of the district court within such counties, by the election commissioner. The jury commissioner shall receive an annual salary of not less than twelve hundred dollars.

(4) In counties having a population in excess of two hundred thousand inhabitants, the judges of the district court within such counties shall determine whether the clerk of the district court will perform the duties of jury commissioner without additional compensation or the election commissioner will be jury commissioner ex officio.

(5) In all counties the necessary expenses incurred in the performance of the duties of jury commissioner shall be paid by the county board of the county out of the general fund, upon proper claims approved by one of the district judges in the judicial district and duly filed with the county board.

(6) In all counties the jury commissioner shall prepare and file the annual inventory statement with the county board of the county of all county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

Source: Laws 1915, c. 248, § 1, p. 568; C.S.1922, § 9095; C.S.1929, § 20-1625; Laws 1931, c. 65, § 5, p. 178; Laws 1939, c. 28, § 20, p. 159; C.S.Supp.,1941, § 20-1625; R.S.1943, § 25-1625; Laws 1947, c. 62, § 9, p. 202; Laws 1953, c. 72, § 6, p. 227; Laws 1961, c. 113, § 1, p. 352; Laws 1971, LB 547, § 1; Laws 1975, LB 527, § 1; Laws 1979, LB 234, § 6; Laws 2003, LB 19, § 4; Laws 2010, LB712, § 2; Laws 2013, LB169, § 1.
Effective date September 6, 2013.

Cross References

For designation of election commissioner in counties having a population in excess of one hundred thousand inhabitants, see section 32-207.

For designation of election commissioner in counties having a population of twenty thousand to one hundred thousand inhabitants, see section 32-211.

CHAPTER 28
CRIMES AND PUNISHMENTS

Article.
1. Provisions Applicable to Offenses Generally.
   (a) General Provisions. 28-101 to 28-105.02.
4. Drugs and Narcotics. 28-401 to 28-416.
7. Offenses Involving the Family Relation. 28-707 to 28-726.
8. Offenses Relating to Morals. 28-801 to 28-832.
9. Offenses Involving Integrity and Effectiveness of Government Operation. 28-915.01, 28-935.
10. Offenses against Animals. 28-1005 to 28-1010.
13. Miscellaneous Offenses.
   (s) Public Protection Act. 28-1354.

ARTICLE 1
PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

Section
28-101. Code, how cited.
28-105.01. Death penalty imposition; restriction on person under eighteen years; restriction on person with intellectual disability; sentencing procedure.
28-105.02. Class IA felony; person under eighteen years; maximum sentence; court consider mitigating factors.

(a) GENERAL PROVISIONS

28-101 Code, how cited.

Sections 28-101 to 28-1356 shall be known and may be cited as the Nebraska Criminal Code.

Source: Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 956, § 12; Laws 1986, LB 969, § 1; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 571, § 2; Laws 1990, LB 1018, § 1; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010,

LB252, § 1; Laws 2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11; Laws 2011, LB20, § 1; Laws 2011, LB226, § 1; Laws 2011, LB667, § 1; Laws 2013, LB3, § 1; Laws 2013, LB44 § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB3, section 1, with LB44, section 1, to reflect all amendments.

Note: Changes made by LB3 became effective May 17, 2013. Changes made by LB44 became effective September 6, 2013.

28-105.01 Death penalty imposition; restriction on person under eighteen years; restriction on person with intellectual disability; sentencing procedure.

(1) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who was under the age of eighteen years at the time of the commission of the crime.

(2) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person with an intellectual disability.

(3) As used in subsection (2) of this section, intellectual disability means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of intellectual disability.

(4) If (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall hold a hearing prior to any sentencing determination proceeding as provided in section 29-2521 upon a verified motion of the defense requesting a ruling that the penalty of death be precluded under subsection (2) of this section. If the court finds, by a preponderance of the evidence, that the defendant is a person with an intellectual disability, the death sentence shall not be imposed. A ruling by the court that the evidence of diminished intelligence introduced by the defendant does not preclude the death penalty under subsection (2) of this section shall not restrict the defendant's opportunity to introduce such evidence at the sentencing determination proceeding as provided in section 29-2521 or to argue that such evidence should be given mitigating significance.

Source: Laws 1982, LB 787, § 23; Laws 1998, LB 1266, § 2; Laws 2002, Third Spec. Sess., LB 1, § 2; Laws 2013, LB23, § 3.
Effective date September 6, 2013.

28-105.02 Class IA felony; person under eighteen years; maximum sentence; court consider mitigating factors.

(1) Notwithstanding any other provision of law, the penalty for any person convicted of a Class IA felony for an offense committed when such person was under the age of eighteen years shall be a maximum sentence of not greater than life imprisonment and a minimum sentence of not less than forty years' imprisonment.

(2) In determining the sentence of a convicted person under subsection (1) of this section, the court shall consider mitigating factors which led to the commission of the offense. The convicted person may submit mitigating factors to the court, including, but not limited to:

(a) The convicted person's age at the time of the offense;

(b) The impetuosity of the convicted person;

(c) The convicted person's family and community environment;

(d) The convicted person's ability to appreciate the risks and consequences of the conduct;

(e) The convicted person's intellectual capacity; and

(f) The outcome of a comprehensive mental health evaluation of the convicted person conducted by an adolescent mental health professional licensed in this state. The evaluation shall include, but not be limited to, interviews with the convicted person's family in order to learn about the convicted person's prenatal history, developmental history, medical history, substance abuse treatment history, if any, social history, and psychological history.

Source: Laws 2013, LB44, § 2.
Effective date September 6, 2013.

ARTICLE 4
DRUGS AND NARCOTICS

28-401 Terms, defined.

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer shall mean to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of another person but shall not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration shall mean the Drug Enforcement Administration, United States Department of Justice;

(4) Controlled substance shall mean a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2009, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department shall mean the Department of Health and Human Services;

(7) Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute shall mean to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe shall mean to issue a medical order;

(11) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but shall not include devices or their components, parts, or accessories;

(12) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana shall mean all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(14) Manufacture shall mean the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of

opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate shall not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate shall include its racemic and levorotatory forms;

(17) Opium poppy shall mean the plant of the species Papaver somniferum L., except the seeds thereof;

(18) Poppy straw shall mean all parts, except the seeds, of the opium poppy after mowing;

(19) Person shall mean any corporation, association, partnership, limited liability company, or one or more individuals;

(20) Practitioner shall mean a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(21) Production shall include the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor shall mean a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State shall mean the State of Nebraska;

(24) Ultimate user shall mean a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital shall have the same meaning as in section 71-419;

(26) Cooperating individual shall mean any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis shall mean: (a) The separated resin, whether crude or purified, obtained from a plant of the genus cannabis; or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols;

(28) Exceptionally hazardous drug shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(29) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30)(a) Controlled substance analogue shall mean a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue shall not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2009, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2009, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid shall mean any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid shall not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order shall mean an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order shall not include a prescription;

(33) Medical order shall mean a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription shall mean an order for a controlled substance issued by a practitioner. Prescription shall not include a chart order;

(35) Registrant shall mean any person who has a controlled substances registration issued by the state or the administration;

(36) Reverse distributor shall mean a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(37) Signature shall mean the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(38) Facsimile shall mean a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature shall have the definition found in section 86-621;

(40) Electronic transmission shall mean transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission; and

(41) Long-term care facility shall mean an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4.
Effective date September 6, 2013.

Cross References

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

28-405 Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol;

(2) Allylprodine;

(3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(4) Alphameprodine;

(5) Alphamethadol;
(6) Benzethidine;
(7) Betacetylmethadol;
(8) Betameprodine;
(9) Betamethadol;
(10) Betaprodine;
(11) Clonitazene;
(12) Dextromoramide;
(13) Difenoxin;
(14) Diampromide;
(15) Diethylthiambutene;
(16) Dimenoxadol;
(17) Dimepheptanol;
(18) Dimethylthiambutene;
(19) Dioxaphetyl butyrate;
(20) Dipipanone;
(21) Ethylmethylthiambutene;
(22) Etonitazene;
(23) Etoxeridine;
(24) Furethidine;
(25) Hydroxypethidine;
(26) Ketobemidone;
(27) Levomoramide;
(28) Levophenacylmorphan;
(29) Morpheridine;
(30) Noracymethadol;
(31) Norlevorphanol;
(32) Normethadone;
(33) Norpipanone;
(34) Phenadoxone;
(35) Phenampromide;
(36) Phenomorphan;
(37) Phenoperidine;
(38) Piritramide;
(39) Proheptazine;
(40) Properidine;
(41) Propiram;
(42) Racemoramide;
(43) Trimeperidine;
(44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;
(45) Tilidine;

(46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;

(48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;

(49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;

(50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;

(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers; and

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine, except hydrochloride salt;

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine; and

(23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(3) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(4) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(5) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(6) Lysergic acid diethylamide;

(7) Marijuana;

(8) Mescaline;

(9) Peyote. Peyote shall mean all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;

(10) Psilocybin;

(11) Psilocyn;

(12) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or

trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered;

(13) N-ethyl-3-piperidyl benzilate;

(14) N-methyl-3-piperidyl benzilate;

(15) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; and TCP;

(16) Hashish or concentrated cannabis;

(17) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;

(18) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(19) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(20) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(21) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(22) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(23) Alpha-methyltryptamine, which is also known as AMT;

(24) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(25) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (A) through (K) of this subdivision, including their salts, isomers, salts of isomers, and nitrogen-heterocyclic analogs, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(A) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extrac-

tives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(B) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(C) Naphthylmethylindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(D) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(E) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(F) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;

(G) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not substituted in the cyclohexyl ring to any extent;

(H) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl 1-(N-

methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;

(I) Adamantoylindoles: Any compound containing a 3-adamantoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent;

(J) Tetramethylcyclopropanoylindoles: Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcycloproplyl ring to any extent; and

(K) Adamantylindole carboxamides: Any compound containing a 1-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxamide group by an adamantyl, 1-naphthyl, or phenyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent;

(26) Any material, compound, mixture, or preparation containing any quantity of a substituted phenethylamine as listed in subdivisions (A) through (C) of this subdivision, unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from phenylethan-2-amine by substitution on the phenyl ring with a fused methylenedioxy ring, fused furan ring, or a fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems, whether or not the compound is further modified in any of the following ways:

(A) Substitution of the phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups; (B) substitution at the 2-position by any alkyl groups; or (C) substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl or methoxybenzyl groups, and including, but not limited to:

(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine;

(ii) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine, which is also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine;

(iii) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine, which is also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine;

(iv) 2-(2,5-Dimethoxyphenyl)ethanamine, which is also known as 2C-H or 2,5-Dimethoxyphenethylamine;

(v) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine;

(vi) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine, which is also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine;

(vii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine, which is also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine;

(viii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine;

(ix) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine;

(x) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine;

(xi) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine, which is also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine;

(xii) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine, which is also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine;

(xiii) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane, which is also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine;

(xiv) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine, which is also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine;

(xv) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-B-NBOMe; 25B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine;

(xvi) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-I-NBOMe; 25I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine;

(xvii) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine, which is also known as Mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine;

(xviii) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-C-NBOMe; or 25C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine;

(xix) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine, which is also known as 2CB-5-hemiFLY;

(xx) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine, which is also known as 2C-B-FLY;

(xxi) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl)ethanamine, which is also known as 2C-B-butterFLY;

(xxii) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7- tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane, which is also known as 2C-B-FLY-NBOMe;

(xxiii) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, which is also known as bromo-benzodifuranylisopropylamine or bromo-dragonFLY;

(xxiv) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine, which is also known as 2C-INBOH or 25I-NBOH;

(xxv) 5-(2-Aminoprpyl)benzofuran, which is also known as 5-APB;

(xxvi) 6-(2-Aminopropyl)benzofuran, which is also known as 6-APB;

(xxvii) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 5-APDB;

(xxviii) 6-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 6-APDB;

(xxix) 2,5-dimethoxy-amphetamine, which is also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA;

(xxx) 2,5-dimethoxy-4-ethylamphetamine, which is also known as DOET;

(xxxi) 2,5-dimethoxy-4-(n)-propylthiophenethylamine, which is also known as 2C-T-7;

(xxxii) 5-methoxy-3,4-methylenedioxy-amphetamine;

(xxxiii) 4-methyl-2,5-dimethoxy-amphetamine, which is also known as 4-methyl-2,5-dimethoxy-amethylphenethylamine; DOM and STP;

(xxxiv) 3,4-methylenedioxy amphetamine, which is also known as MDA;

(xxxv) 3,4-methylenedioxymethamphetamine, which is also known as MDMA;

(xxxvi) 3,4-methylenedioxy-N-ethylamphetamine, which is also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA; and

(xxxvii) 3,4,5-trimethoxy amphetamine;

(27) Any material, compound, mixture, or preparation containing any quantity of a substituted tryptamine unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from 2-(1H-indol-3-yl)ethanamine, which is also known as tryptamine, by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, and including, but not limited to:

(A) 5-methoxy-N,N-diallyltryptamine, which is also known as 5-MeO-DALT;

(B) 4-acetoxy-N,N-dimethyltryptamine, which is also known as 4-AcO-DMT or OAcetylpsilocin;

(C) 4-hydroxy-N-methyl-N-ethyltryptamine, which is also known as 4-HO-MET;

(D) 4-hydroxy-N,N-diisopropyltryptamine, which is also known as 4-HO-DIPT;

(E) 5-methoxy-N-methyl-N-isopropyltryptamine, which is also known as 5-MeOMiPT;

(F) 5-Methoxy-N,N-Dimethyltryptamine, which is also known as 5-MeO-DMT;

(G) 5-methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DiPT;

(H) Diethyltryptamine, which is also known as N,N-Diethyltryptamine, DET; and

(I) Dimethyltryptamine, which is also known as DMT; and

(28)(A) Any substance containing any quantity of the following materials, compounds, mixtures, or structures:

(i) 3,4-methylenedioxymethcathinone, or bk-MDMA, or methylone;

(ii) 3,4-methylenedioxypyrovalerone, or MDPV;

(iii) 4-methylmethcathinone, or 4-MMC, or mephedrone;

(iv) 4-methoxymethcathinone, or bk-PMMA, or PMMC, or methedrone;

(v) Fluoromethcathinone, or FMC;

(vi) Naphthylpyrovalerone, or naphyrone; or

(vii) Beta-keto-N-methylbenzodioxolylpropylamine; or

(B) Unless listed in another schedule, any substance which contains any quantity of any material, compound, mixture, or structure, other than bupropion, that is structurally derived by any means from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(i) Substitution in the ring system to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;

(ii) Substitution at the 3-position with an acyclic alkyl substituent; or

(iii) Substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone; and

(3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxybate; and Sodium Oxybutyrate.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline;

(2) N-ethylamphetamine;

(3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;

(5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;

(6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine; and

(8) Benzylpiperazine, 1-benzylpiperazine.

(f) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:

(i) Raw opium;

(ii) Opium extracts;

(iii) Opium fluid;

(iv) Powdered opium;

(v) Granulated opium;

(vi) Tincture of opium;

(vii) Codeine;

(viii) Ethylmorphine;

(ix) Etorphine hydrochloride;

(x) Hydrocodone;

(xi) Hydromorphone;

(xii) Metopon;

(xiii) Morphine;

(xiv) Oxycodone;

(xv) Oxymorphone;

(xvi) Oripavine;

(xvii) Thebaine; and

(xviii) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Diphenoxylate;

(5) Fentanyl;

(6) Isomethadone;

(7) Levomethorphan;

(8) Levorphanol;

(9) Metazocine;

(10) Methadone;

(11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(13) Pethidine or meperidine;

(14) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(15) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(16) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(17) Phenazocine;

(18) Piminodine;

(19) Racemethorphan;

(20) Racemorphan;

(21) Dihydrocodeine;

(22) Bulk Propoxyphene in nondosage forms;

(23) Sufentanil;

(24) Alfentanil;

(25) Levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(26) Carfentanil;

(27) Remifentanil; and

(28) Tapentadol.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Methamphetamine, its salts, isomers, and salts of its isomers; and

(4) Methylphenidate.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Phencyclidine; and

(5) Glutethimide.

(e) Hallucinogenic substances known as:

(1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone; or

(2) Immediate precursors to phencyclidine, PCP:

(i) 1-phenylcyclohexylamine; or

(ii) 1-piperidinocyclohexanecarbonitrile, PCC.

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;

(2) Chlorhexadol;

(3) Lysergic acid;

(4) Lysergic acid amide;

(5) Methyprylon;

(6) Sulfondiethylmethane;

(7) Sulfonethylmethane;

(8) Sulfonmethane;

(9) Nalorphine;

(10) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(11) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(12) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on July 20, 2002;

(13) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(14) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrazapon.

(c) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(i) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(ii) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(iii) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(iv) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(v) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vi) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vii) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(viii) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(i) Buprenorphine.

(d) Unless contained on the administration's list of exempt anabolic steroids as the list existed on June 1, 2007, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

(1) Boldenone;

(2) Boldione;

(3) Chlorotestosterone (4-chlortestosterone);

(4) Clostebol;

(5) Dehydrochloromethyltestosterone;

(6) Desoxymethyltestosterone;

(7) Dihydrotestosterone (4-dihydrotestosterone);

(8) Drostanolone;

(9) Ethylestrenol;

(10) Fluoxymesterone;

(11) Formebulone (formebolone);

(12) Mesterolone;

(13) Methandienone;

(14) Methandranone;

(15) Methandriol;

(16) Methandrostenolone;

(17) Methenolone;

(18) Methyltestosterone;

(19) Mibolerone;

(20) Nandrolone;

(21) Norethandrolone;

(22) Oxandrolone;

(23) Oxymesterone;

(24) Oxymetholone;

(25) Stanolone;

(26) Stanozolol;

(27) Testolactone;

(28) Testosterone;

(29) Trenbolone;

(30) 19-nor-4,9(10)-androstadienedione; and

(31) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a Food and Drug Administration approved drug product. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5) Clonazepam;

(6) Clorazepate;

(7) Diazepam;

(8) Ethchlorvynol;

(9) Ethinamate;

(10) Flurazepam;

(11) Mebutamate;

(12) Meprobamate;

(13) Methohexital;

(14) Methylphenobarbital;

(15) Oxazepam;

(16) Paraldehyde;

(17) Petrichloral;

(18) Phenobarbital;

(19) Prazepam;

(20) Alprazolam;

(21) Bromazepam;

(22) Camazepam;

(23) Clobazam;

(24) Clotiazepam;

(25) Cloxazolam;

(26) Delorazepam;

(27) Estazolam;

(28) Ethyl loflazepate;

(29) Fludiazepam;

(30) Flunitrazepam;

(31) Halazepam;

(32) Haloxazolam;

(33) Ketazolam;

(34) Loprazolam;

(35) Lorazepam;

(36) Lormetazepam;

(37) Medazepam;

(38) Nimetazepam;

(39) Nitrazepam;

(40) Nordiazepam;

(41) Oxazolam;

(42) Pinazepam;

(43) Temazepam;

(44) Tetrazepam;

(45) Triazolam;

(46) Midazolam;

(47) Quazepam;

(48) Zolpidem;

(49) Dichloralphenazone; and

(50) Zaleplon.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion;

(2) Phentermine;

(3) Pemoline, including organometallic complexes and chelates thereof;

(4) Mazindol;

(5) Pipradrol;

(6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);

(7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);

(8) Fencamfamin;

(9) Fenproporex;

(10) Mefenorex;

(11) Modafinil; and

(12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Propoxyphene in manufactured dosage forms; and

(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Pentazocine.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Butorphanol.

(g) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Carisoprodol.

(h)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (h)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

(i) Primatene Tablets; and

(ii) Bronkaid Dual Action Caplets.

Schedule V

(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(c) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Ezogabine (N-(2-amino-4-(4-fluorobenzylamino)-phenyl)-carbamic acid ethyl ester);

(2) Lacosamide ((R)-2-acetoamido-N-benzyl-3-methoxy-propionamide); and

(3) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid).

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1; Laws 2011, LB19, § 1; Laws 2012, LB670, § 1; Laws 2013, LB298, § 1. Effective date June 5, 2013.

28-416 Prohibited acts; violations; penalties.

(1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute,

deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or

coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect

to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class III misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(17) A person knowingly or intentionally in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

(18) In addition to the penalties provided in this section:

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under this subsection.

Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws 1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4; Laws 2011, LB19, § 2; Laws 2011, LB463, § 1; Laws 2013, LB298, § 2. Effective date June 5, 2013.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Nebraska Behavioral Health Services Act, see section 71-801.

ARTICLE 7
OFFENSES INVOLVING THE FAMILY RELATION

Section
28-707. Child abuse; privileges not available; penalties.
28-710. Act, how cited; terms, defined.
28-726. Information; access.

28-707 Child abuse; privileges not available; penalties.

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class III felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and

acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Source: Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB507, § 3; Laws 2012, LB799, § 2; Laws 2013, LB255, § 1.
Operative date October 1, 2013.

Cross References

Appointment of guardian ad litem, see section 43-272.01.

28-710 Act, how cited; terms, defined.

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection Act.

(2) For purposes of the Child Protection Act:

(a) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Sexually abused; or

(vi) Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

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

(c) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol;

(d) Out-of-home child abuse or neglect means child abuse or neglect occurring in day care homes, foster homes, day care centers, residential child-caring agencies as defined in section 71-1926, and other child care facilities or institutions; and

(e) Subject of the report of child abuse or neglect means the person or persons identified in the report as responsible for the child abuse or neglect.

Source: Laws 1977, LB 38, § 149; Laws 1979, LB 505, § 1; Laws 1982, LB 522, § 3; Laws 1985, LB 447, § 10; Laws 1988, LB 463, § 42; Laws 1992, LB 1184, § 9; Laws 1994, LB 1035, § 2; Laws 1996, LB 1044, § 71; Laws 1997, LB 119, § 1; Laws 2005, LB 116, § 1; Laws 2013, LB265, § 29.
Effective date May 26, 2013.

28-726 Information; access.

Except as provided in this section and sections 28-722 and 81-3126, no person, official, or agency shall have access to information in the tracking

system of child protection cases maintained pursuant to section 28-715 or in records in the central register of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;

(2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;

(3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;

(5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;

(6) The Foster Care Review Office and the designated local foster care review board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the office and local board shall not include the name or identity of any person making a report of suspected child abuse or neglect;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect;

(9) For purposes of licensing providers of child care programs, the Department of Health and Human Services; and

(10) A probation officer administering juvenile intake services pursuant to section 29-2260.01, conducting court-ordered predispositional investigations prior to disposition, or supervising a juvenile upon disposition.

Source: Laws 1979, LB 505, § 14; Laws 1982, LB 522, § 9; Laws 1988, LB 463, § 47; Laws 1990, LB 1222, § 1; Laws 1992, LB 643, § 2; Laws 1994, LB 1035, § 7; Laws 1997, LB 119, § 4; Laws 2001, LB 214, § 2; Laws 2002, LB 642, § 8; Laws 2005, LB 116, § 18; Laws 2007, LB296, § 39; Laws 2008, LB782, § 3; Laws 2012, LB998, § 1; Laws 2013, LB561, § 1.
Effective date May 30, 2013.

ARTICLE 8

OFFENSES RELATING TO MORALS

Section
28-801. Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties.

Section
28-801.01. Solicitation of prostitution; penalty; affirmative defense.
28-802. Pandering; penalty.
28-804. Keeping a place of prostitution; penalty.
28-830. Human trafficking; forced labor or services; terms, defined.
28-831. Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.
28-832. Repealed. Laws 2013, LB 1, § 3.

28-801 Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties.

(1) Except as provided in subsection (5) of this section, any person who performs, offers, or agrees to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, with any person not his or her spouse, in exchange for money or other thing of value, commits prostitution.

(2) Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions or has had one prior conviction, such person shall be guilty of a Class II misdemeanor. If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment; and

(b) If such person has had two or more prior convictions, such person shall be guilty of a Class I misdemeanor. If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment.

(3) It is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in section 28-830.

(4) For purposes of this section, prior conviction means any conviction on or after July 14, 2006, for violation of subsection (1) of this section or any conviction on or after July 14, 2006, for violation of a city or village ordinance relating to prostitution.

(5) If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) of this section is a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under section 43-248 and further disposition under the Nebraska Juvenile Code. A law enforcement officer who takes a person under eighteen years of age into custody under this section shall immediately report an allegation of a violation of section 28-831 to the Department of Health and Human Services which shall commence an investigation within twenty-four hours under the Child Protection Act.

Source: Laws 1977, LB 38, § 157; Laws 1985, LB 19, § 1; Laws 1987, LB 176, § 1; Laws 1989, LB 116, § 1; Laws 2006, LB 1086, § 7; Laws 2013, LB255, § 2.
Operative date October 1, 2013.

Cross References

Child Protection Act, see section 28-710.
Nebraska Juvenile Code, see section 43-2,129.

28-801.01 Solicitation of prostitution; penalty; affirmative defense.

(1) Any person who solicits another person not his or her spouse to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, in exchange for money or other thing of value, commits solicitation of prostitution.

(2) Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions, such person shall be guilty of a Class I misdemeanor and pay a fine of not less than two hundred fifty dollars, unless the person solicited is under the age of eighteen years, in which case such person violating this section shall be guilty of a Class IV felony. If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than two hundred fifty dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment; and

(b) If such person has had one or more prior convictions, such person shall be guilty of a Class IV felony and pay a fine of not less than five hundred dollars. If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than five hundred dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment.

(3) It is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in section 28-830.

Source: Laws 2006, LB 1086, § 8; Laws 2013, LB255, § 3.
Operative date October 1, 2013.

28-802 Pandering; penalty.

(1) A person commits pandering if such person:

(a) Entices another person to become a prostitute; or

(b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed; or

(c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or

(d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.

(2) Pandering is a Class IV felony for a first offense, unless the person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years, in which case pandering is a Class III felony

for a first offense. Pandering is a Class III felony for a second or subsequent offense.

Source: Laws 1977, LB 38, § 158; Laws 2012, LB1145, § 1; Laws 2013, LB255, § 4.
Operative date October 1, 2013.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-804 Keeping a place of prostitution; penalty.

(1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.

(2) Keeping a place of prostitution is a Class I misdemeanor, unless any person using such place for the practice of prostitution is under the age of eighteen years, in which case any person convicted of keeping a place of prostitution shall be guilty of a Class IV felony.

Source: Laws 1977, LB 38, § 160; Laws 2013, LB255, § 5.
Operative date October 1, 2013.

28-830 Human trafficking; forced labor or services; terms, defined.

For purposes of sections 28-830 and 28-831, the following definitions apply:

(1) Actor means a person who solicits, procures, or supervises the services or labor of another person;

(2) Commercial sexual activity means any sex act on account of which anything of value is given, promised to, or received by any person;

(3) Financial harm means theft by extortion as described by section 28-513;

(4) Forced labor or services means labor or services that are performed or provided by another person and are obtained or maintained through:

(a) Inflicting or threatening to inflict serious personal injury to the other person as defined by section 28-318;

(b) Physically restraining or threatening to physically restrain the other person;

(c) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of the other person; or

(d) Causing or threatening to cause financial harm to the other person;

(5) Labor means work of economic or financial value;

(6) Labor trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older intending or knowing that the person will be subjected to forced labor or services;

(7) Labor trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor

intending or knowing that the minor will be subjected to forced labor or services;

(8) Maintain means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the other person to perform such type of service;

(9) Minor means a person younger than eighteen years of age;

(10) Obtain means, in relation to labor or services, to secure performance thereof;

(11) Services means an ongoing relationship between the actor and another person in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually-explicit performances are forms of services under this section. Nothing in this subdivision shall be construed to legalize prostitution;

(12) Sex trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older for the purpose of having such person engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a person eighteen years of age or older to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;

(13) Sex trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;

(14) Sexually-explicit performance means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and

(15) Trafficking victim means a person subjected to any act or acts prohibited by section 28-831.

Source: Laws 2006, LB 1086, § 10; Laws 2013, LB1, § 1; Laws 2013, LB255, § 6.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB1, section 1, with LB255, section 6, to reflect all amendments.

Note: Changes made by LB1 became effective September 6, 2013. Changes made by LB255 became operative October 1, 2013.

28-831 Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.

(1) No person shall knowingly engage in labor trafficking or sex trafficking. If an actor knowingly engages in labor trafficking or sex trafficking by:

(a) Inflicting or threatening to inflict serious personal injury to the other person as defined by section 28-318, the actor is guilty of a Class III felony;

(b) Physically restraining or threatening to physically restrain the other person, the actor is guilty of a Class III felony;

(c) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other

actual or purported government identification document, of the other person, the actor is guilty of a Class IV felony; or

(d) Causing or threatening to cause financial harm to the other person, the actor is guilty of a Class I misdemeanor.

(2) No person shall engage in labor trafficking of a minor or sex trafficking of a minor. An actor who engages in labor trafficking of a minor or sex trafficking of a minor shall be punished as follows:

(a) In cases in which the actor uses overt force or the threat of force against the trafficking victim, the actor is guilty of a Class II felony;

(b) In cases in which the trafficking victim has not attained the age of fifteen years, the actor is guilty of a Class II felony; or

(c) In cases involving a trafficking victim between the ages of fifteen and eighteen years, and the actor does not use overt force or threat of force against the trafficking victim, the actor is guilty of a Class III felony.

(3) Any person who benefits, financially or by receiving anything of value, from participation in a venture which has, as part of the venture, an act that is in violation of this section, is guilty of a Class IV felony.

Source: Laws 2006, LB 1086, § 11; Laws 2013, LB255, § 7.
Operative date October 1, 2013.

28-832 Repealed. Laws 2013, LB 1, § 3.

ARTICLE 9

OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION

Section

28-915.01 False statement under oath or affirmation; penalty; applicability of section.

(1) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he or she does not believe the statement to be true, is guilty of a Class I misdemeanor if the falsification:

(a) Occurs in an official proceeding; or

(b) Is intended to mislead a public servant in performing his or her official function.

(2) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he or she does not believe the statement to be true, is guilty of a Class II misdemeanor if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(3) Subsections (4) through (7) of section 28-915 shall apply to subsections (1) and (2) of this section.

(4) This section shall not apply to reports, statements, affidavits, or other documents made or filed pursuant to the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1987, LB 451, § 4; Laws 2007, LB464, § 1; Laws 2013, LB79, § 1.
Operative date January 1, 2014.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

28-935 Fraudulently filing a financing statement, lien, or document; penalty.

(1) A person commits the offense of fraudulently filing a financing statement, lien, or document if the person directly, or through an intermediary, submits for filing or recording in the public record, as defined in section 28-911:

(a) Any document purporting to create a nonconsensual common-law lien, as defined in section 52-1901, knowing or having reason to know that the lien is a nonconsensual common-law lien;

(b) A financing statement pursuant to article 9, Uniform Commercial Code, knowing or having reason to know that the financing statement is not based on a bona fide security agreement or was not authorized or authenticated by the alleged debtor identified in the financing statement or an authorized representative of the alleged debtor; or

(c) Any document filed in an attempt to harass an entity, individual, or public official or obstruct a government operation or judicial proceeding, knowing or having reason to know such document contained false information.

(2) Fraudulently filing a financing statement, lien, or document is a Class IV felony.

(3) Lack of belief in the jurisdiction or authority of the state or of the government of the United States is no defense to prosecution under this section.

Source: Laws 2013, LB3, § 2.
Effective date May 17, 2013.

ARTICLE 10

OFFENSES AGAINST ANIMALS

Section
28-1005. Dogfighting, cockfighting, bearbaiting, or pitting an animal against another; prohibited acts; penalty.
28-1005.01. Ownership or possession of animal fighting paraphernalia; penalty.
28-1009. Abandonment; cruel neglect; harassment of a police animal; penalty.
28-1010. Indecency with an animal; penalty.

28-1005 Dogfighting, cockfighting, bearbaiting, or pitting an animal against another; prohibited acts; penalty.

(1) No person shall knowingly:

(a) Promote, engage in, or be employed at dogfighting, cockfighting, bearbaiting, or pitting an animal against another;

(b) Receive money for the admission of another person to a place kept for such purpose;

(c) Own, use, train, sell, or possess an animal for such purpose; or

(d) Permit any act as described in this subsection to occur on any premises owned or controlled by him or her.

(2) Any person violating subsection (1) of this section shall be guilty of a Class IV felony and shall also be subject to section 28-1019.

(3) No person shall knowingly and willingly be present at and witness as a spectator dogfighting, cockfighting, bearbaiting, or the pitting of an animal against another as prohibited in subsection (1) of this section. Any person who violates any provision of this subsection shall be guilty of a Class IV felony and shall also be subject to section 28-1019.

Source: Laws 1988, LB 170, § 3; Laws 2003, LB 273, § 3; Laws 2013, LB329, § 1.
Effective date September 6, 2013.

28-1005.01 Ownership or possession of animal fighting paraphernalia; penalty.

(1) No person shall knowingly or intentionally own or possess animal fighting paraphernalia with the intent to commit a violation of section 28-1005.

(2)(a) For purposes of this section, except as provided in subdivision (b) of this subsection, animal fighting paraphernalia means equipment, products, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of the pitting of an animal against another as defined in section 28-1004. Animal fighting paraphernalia includes, but is not limited to, the following:

(i) A breaking stick, which means a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on another animal or object;

(ii) A cat mill, which means a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit, or other small animal beyond the grasp of the dog;

(iii) A treadmill, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing place;

(iv) A fighting pit, which means a walled area designed to contain an animal fight;

(v) A springpole, which means a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground;

(vi) A heel, which means any edged or pointed instrument designed to be attached to the leg of a fowl;

(vii) A boxing glove or muff, which means a fitted protective covering for the spurs of a fowl; and

(viii) Any other instrument commonly used in the furtherance of pitting an animal against another.

(b) Animal fighting paraphernalia does not include equipment, products, or materials of any kind used by a veterinarian licensed to practice veterinary medicine and surgery in this state.

(3) Any person violating subsection (1) of this section is guilty of a Class I misdemeanor and may also be subject to section 28-1019.

Source: Laws 2010, LB252, § 2; Laws 2013, LB329, § 2.
Effective date September 6, 2013.

28-1009 Abandonment; cruel neglect; harassment of a police animal; penalty.

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony.

(2)(a) Except as provided in subdivision (b) of this subsection, a person who cruelly mistreats an animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

(b) A person who cruelly mistreats an animal is guilty of a Class IV felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal.

(3) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties. Harassment of a police animal is a Class IV misdemeanor unless the harassment is the proximate cause of the death of the police animal, in which case it is a Class IV felony.

(4) A person convicted of a Class I misdemeanor under subdivision (2)(a) of this section may also be subject to section 28-1019. A person convicted of a Class IV felony under this section shall also be subject to section 28-1019.

Source: Laws 1990, LB 50, § 2; Laws 1995, LB 283, § 3; Laws 2002, LB 82, § 6; Laws 2003, LB 273, § 5; Laws 2007, LB227, § 2; Laws 2013, LB329, § 3.
Effective date September 6, 2013.

28-1010 Indecency with an animal; penalty.

A person commits indecency with an animal when such person subjects an animal to sexual penetration as defined in section 28-318. Indecency with an animal is a Class III misdemeanor. A person convicted under this section may also be subject to section 28-1019.

Source: Laws 1977, LB 38, § 216; Laws 1978, LB 748, § 16; R.S.1943, (1989), § 28-1003; Laws 1990, LB 50, § 3; Laws 2009, LB97, § 16; Laws 2013, LB329, § 4.
Effective date September 6, 2013.

ARTICLE 13

MISCELLANEOUS OFFENSES

(s) PUBLIC PROTECTION ACT

Section
28-1354. Terms, defined.

(s) PUBLIC PROTECTION ACT

28-1354 Terms, defined.

For purposes of the Public Protection Act:

(1) Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;

(2) Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;

(3) Person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property;

(4) Prosecutor includes the Attorney General of the State of Nebraska, the deputy attorney general, assistant attorneys general, a county attorney, a deputy county attorney, or any person so designated by the Attorney General, a county attorney, or a court of the state to carry out the powers conferred by the act;

(5) Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

(a) Offenses against the person which include: Murder in the first degree under section 28-303; murder in the second degree under section 28-304; manslaughter under section 28-305; assault in the first degree under section 28-308; assault in the second degree under section 28-309; assault in the third degree under section 28-310; terroristic threats under section 28-311.01; kidnapping under section 28-313; false imprisonment in the first degree under section 28-314; false imprisonment in the second degree under section 28-315; sexual assault in the first degree under section 28-319; and robbery under section 28-324;

(b) Offenses relating to controlled substances which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section 28-416; possession of marijuana weighing more than one pound under subsection (12) of section 28-416; possession of money used or intended to be used to facilitate a violation of subsection (1) of section 28-416 prohibited under subsection (17) of section 28-416; any violation of section 28-418; to unlawfully manufacture, distribute, deliver, or possess with intent to distribute or deliver an imitation controlled substance under section 28-445; possession of anhydrous ammonia with the intent to manufacture methamphetamine under section 28-451; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section 28-452;

(c) Offenses against property which include: Arson in the first degree under section 28-502; arson in the second degree under section 28-503; arson in the

third degree under section 28-504; burglary under section 28-507; theft by unlawful taking or disposition under section 28-511; theft by shoplifting under section 28-511.01; theft by deception under section 28-512; theft by extortion under section 28-513; theft of services under section 28-515; theft by receiving stolen property under section 28-517; criminal mischief under section 28-519; and unlawfully depriving or obtaining property or services using a computer under section 28-1344;

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a forgery device under section 28-626; unlawful manufacture of a financial transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under section 28-629; unlawful factoring of a financial transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer in the first degree under section 28-929; assault on an officer in the second degree under section 28-930; assault on an officer in the third degree under section 28-931; and assault on an officer using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under section 28-1105; gambling debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a handgun under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204.01; using a deadly weapon to commit a felony or possession of a deadly weapon during the commission of a felony under section 28-1205; possession of a deadly weapon by a prohibited person under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition

of a stolen firearm under section 28-1212.03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

(h) Any violation of the Securities Act of Nebraska pursuant to section 8-1117;

(i) Any violation of the Nebraska Revenue Act of 1967 pursuant to section 77-2713;

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

(6) State means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and

(7) Unlawful debt means a debt of at least one thousand five hundred dollars:

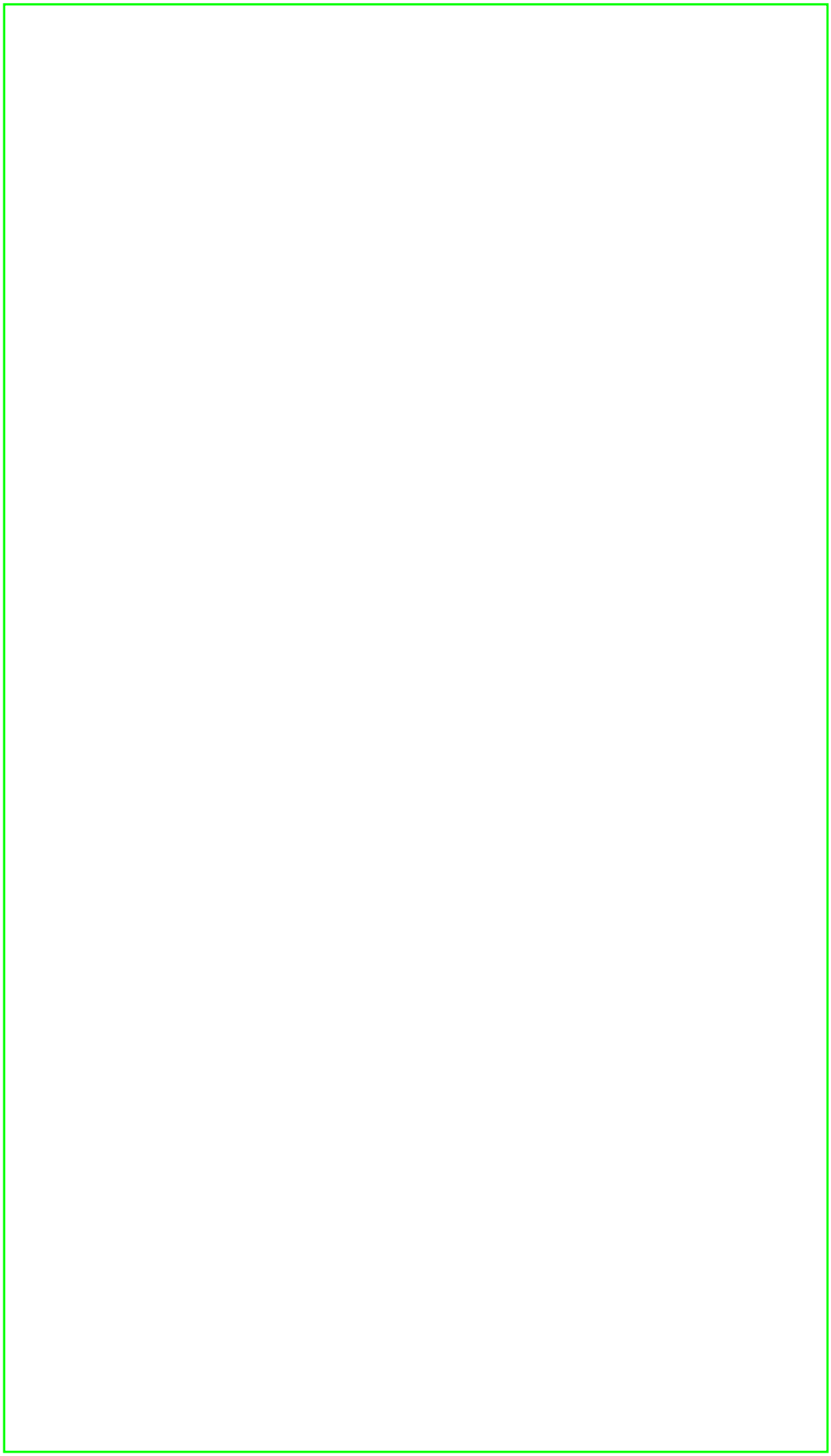
(a) Incurred or contracted in gambling activity which was in violation of federal law or the law of the state or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury; or

(b) Which was incurred in connection with the business of gambling in violation of federal law or the law of the state or the business of lending money or a thing of value at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

Source: Laws 2009, LB155, § 4; Laws 2010, LB771, § 13; Laws 2013, LB255, § 8.
Operative date October 1, 2013.

Cross References

Child Pornography Prevention Act, see section 28-1463.01.
Computer Crimes Act, see section 28-1341.
Nebraska Revenue Act of 1967, see section 77-2701.
Securities Act of Nebraska, see section 8-1123.



CHAPTER 29
CRIMINAL PROCEDURE

Article.
8. Search and Seizure.
(b) Disposition of Seized Property. 29-818.
22. Judgment on Conviction.
(a) Judgment on Conviction. 29-2204.
(c) Probation. 29-2257 to 29-2264.

ARTICLE 8
SEARCH AND SEIZURE

(b) DISPOSITION OF SEIZED PROPERTY

Section
29-818. Seized property; custody; pet animal; additional procedures; hearing; order to pay expenses; delinquent payments; hearing; notice; appeal.

(b) DISPOSITION OF SEIZED PROPERTY

29-818 Seized property; custody; pet animal; additional procedures; hearing; order to pay expenses; delinquent payments; hearing; notice; appeal.

(1) Except for pet animals as provided in subsection (2) of this section, property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same, unless otherwise directed by the judge or magistrate, and shall be so kept so long as necessary for the purpose of being produced as evidence on any trial. Property seized may not be taken from the officer having it in custody by replevin or other writ so long as it is or may be required as evidence in any trial, nor may it be so taken in any event where a complaint has been filed in connection with which the property was or may be used as evidence, and the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the property or funds and to determine rights therein, including questions respecting the title, possession, control, and disposition thereof.

(2)(a) Any pet animal seized under a search warrant or validly seized without a warrant may be kept by the officer seizing the same on the property of the person who owns, keeps, harbors, maintains, or controls such pet animal.

(b) When any pet animal is seized under this subsection, the court shall provide the person who owns, keeps, harbors, maintains, or controls such pet animal with notice that a hearing will be had and specify the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such pet animal was seized. Such publication shall be made after application and order of the court. Unless otherwise determined and ordered by the court, the date of such hearing shall be no later than ten days after the seizure.

(c) At the hearing, the court shall determine the disposition of the pet animal, and if the court determines that any pet animal shall not be returned, the court

shall order the person from whom the pet animal was seized to pay all expenses for the support and maintenance of the pet animal, including expenses for shelter, food, veterinary care, and board, necessitated by the possession of the pet animal. At the hearing, the court shall also consider the person's ability to pay for the expenses of the pet animal and the amount of such payments. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent succeeding thirty-day period, if any, shall be due on or before the tenth day of such period.

(d) If a person becomes delinquent in his or her payments for the expenses of the pet animal, the court shall hold a hearing to determine the disposition of the seized pet animal. Notice of such hearing shall be given to the person who owns, keeps, harbors, maintains, or controls such pet animal and to any lienholder or security interest holder of record as provided in subdivision (b) of this subsection.

(e) An appeal may be entered within ten days after a hearing under subdivision (c) or (d) of this subsection. Any person filing an appeal shall post a bond sufficient to pay all costs of care of the pet animal for thirty days. Such payment will be required for each succeeding thirty-day period until the appeal is final.

(f) Should the person be found not guilty, all funds paid for the expenses of the pet animal shall be returned to the person.

(g) For purposes of this subsection, pet animal means any domestic dog, domestic cat, mini pig, domestic rabbit, domestic ferret, domestic rodent, bird except a bird raised as an agricultural animal and specifically excluding any bird possessed under a license issued by the State of Nebraska or the United States Fish and Wildlife Service, nonlethal aquarium fish, nonlethal invertebrate, amphibian, turtle, nonvenomous snake that will not grow to more than eight feet in length at maturity, or such other animal as may be specified and for which a permit shall be issued by an animal control authority after inspection and approval, except that any animal forbidden to be sold, owned, or possessed by federal or state law is not a pet animal.

(h) This section shall not preempt, and shall not be construed to preempt, any ordinance of a city of the metropolitan or primary class.

Source: Laws 1963, c. 161, § 7, p. 573; Laws 2010, LB712, § 14; Laws 2013, LB423, § 2.
Effective date September 6, 2013.

Cross References

Seizure of vehicle and component parts, see section 60-2608.

ARTICLE 22
JUDGMENT ON CONVICTION

(a) JUDGMENT ON CONVICTION

(c) PROBATION

(a) JUDGMENT ON CONVICTION

29-2204 Indeterminate sentence; court; duties; study of offender; when; costs; defendant under eighteen years of age; disposition.

(1) Except when a term of life imprisonment is required by law, in imposing an indeterminate sentence upon an offender the court shall:

(a)(i) Until July 1, 1998, fix the minimum and maximum limits of the sentence to be served within the limits provided by law, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum; and

(ii) Beginning July 1, 1998:

(A) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law for any class of felony other than a Class IV felony, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum. If the criminal offense is a Class IV felony, the court shall fix the minimum and maximum limits of the sentence, but the minimum limit fixed by the court shall not be less than the minimum provided by law nor more than one-third of the maximum term and the maximum limit shall not be greater than the maximum provided by law; or

(B) Impose a definite term of years, in which event the maximum term of the sentence shall be the term imposed by the court and the minimum term shall be the minimum sentence provided by law;

(b) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(c) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term. If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

(2)(a) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the

rehabilitative resources or programs which may be available to suit his or her needs. By the expiration of the period of commitment or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the department believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with subsection (1) of this section. The term of the sentence shall run from the date of original commitment under this subsection.

(b) In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the defendant is held in a state institution under this subsection shall be a responsibility of the state and the county shall be liable only for the cost of delivering the defendant to the institution and the cost of returning him or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

(3) Except when a term of life is required by law, whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code. Until October 1, 2013, prior to making a disposition which commits the juvenile to the Office of Juvenile Services, the court shall order the juvenile to be evaluated by the office if the juvenile has not had an evaluation within the past twelve months.

Source: G.S.1873, c. 58, § 498, p. 832; R.S.1913, § 9140; C.S.1922, § 10165; C.S.1929, § 29-2205; R.S.1943, § 29-2204; Laws 1974, LB 620, § 7; Laws 1988, LB 790, § 3; Laws 1993, LB 31, § 9; Laws 1993, LB 529, § 1; Laws 1993, LB 627, § 1; Laws 1994, LB 988, § 8; Laws 1995, LB 371, § 12; Laws 1997, LB 364, § 14; Laws 1998, LB 1073, § 10; Laws 2002, Third Spec. Sess., LB 1, § 8; Laws 2011, LB12, § 2; Laws 2013, LB561, § 2. Effective date May 30, 2013.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

(c) PROBATION

29-2257 Nebraska Probation System; established; duties; salary equalization.

The Nebraska Probation System is established which shall consist of the probation administrator, chief probation officers, probation officers, and support staff. The system shall be responsible for juvenile intake services, for preadjudication juvenile supervision services under section 43-254 beginning October 1, 2013, for presentence and other probation investigations, for the direct supervision of persons placed on probation, and for non-probation-based programs and services authorized by an interlocal agreement pursuant to subdivision (16) of section 29-2252. The system shall be sufficient in size to assure that no probation officer carries a caseload larger than is compatible with adequate probation investigation or supervision. Probation officers shall

be compensated with salaries substantially equal to other state employees who have similar responsibilities.

This provision for salary equalization shall apply only to probation officers and support staff and shall not apply to chief probation officers, the probation administrator, the chief deputy administrator, the deputy probation administrator, or any other similarly established management positions.

Source: Laws 1971, LB 680, § 12; Laws 1986, LB 529, § 39; Laws 1995, LB 371, § 14; Laws 2001, LB 451, § 3; Laws 2005, LB 538, § 8; Laws 2013, LB561, § 3.
Effective date May 30, 2013.

29-2258 District probation officer; duties; powers.

A district probation officer shall:

(1) Conduct juvenile intake interviews and investigations in accordance with sections 43-253 and 43-260.01 and, beginning October 1, 2013, supervise delivery of preadjudication juvenile services under subdivision (6) of section 43-254;

(2) Make presentence and other investigations, as may be required by law or directed by a court in which he or she is serving;

(3) Supervise probationers in accordance with the rules and regulations of the office and the directions of the sentencing court;

(4) Advise the sentencing court, in accordance with the Nebraska Probation Administration Act and such rules and regulations of the office, of violations of the conditions of probation by individual probationers;

(5) Advise the sentencing court, in accordance with the rules and regulations of the office and the direction of the court, when the situation of a probationer may require a modification of the conditions of probation or when a probationer's adjustment is such as to warrant termination of probation;

(6) Provide each probationer with a statement of the period and conditions of his or her probation;

(7) Whenever necessary, exercise the power of arrest or temporary custody as provided in section 29-2266 or 43-286.01;

(8) Establish procedures for the direction and guidance of deputy probation officers under his or her jurisdiction and advise such officers in regard to the most effective performance of their duties;

(9) Supervise and evaluate deputy probation officers under his or her jurisdiction;

(10) Delegate such duties and responsibilities to a deputy probation officer as he or she deems appropriate;

(11) Make such reports as required by the administrator, the judges of the probation district in which he or she serves, or the Supreme Court;

(12) Keep accurate and complete accounts of all money or property collected or received from probationers and give receipts therefor;

(13) Cooperate fully with and render all reasonable assistance to other probation officers;

(14) In counties with a population of less than twenty-five thousand people, participate in pretrial diversion programs established pursuant to sections

29-3601 to 29-3604 and juvenile pretrial diversion programs established pursuant to sections 43-260.02 to 43-260.07 as requested by judges of the probation district in which he or she serves or as requested by a county attorney and approved by the judges of the probation district in which he or she serves, except that participation in such programs shall not require appointment of additional personnel and shall be consistent with the probation officer's current caseload;

(15) Participate, at the direction of the probation administrator pursuant to an interlocal agreement which meets the requirements of section 29-2255, in non-probation-based programs and services;

(16) Perform such other duties not inconsistent with the Nebraska Probation Administration Act or the rules and regulations of the office as a court may from time to time direct; and

(17) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Source: Laws 1971, LB 680, § 13; Laws 1979, LB 536, § 8; Laws 1986, LB 529, § 40; Laws 2001, LB 451, § 4; Laws 2003, LB 43, § 10; Laws 2005, LB 538, § 9; Laws 2010, LB800, § 6; Laws 2011, LB463, § 2; Laws 2013, LB561, § 4.
Effective date May 30, 2013.

29-2264 Probation; completion; conviction may be set aside; conditions; retroactive effect.

(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of a misdemeanor or felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction; and

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction.

(5) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude use of the conviction as evidence of incompetence, neglect of duty, physical, mental, or emotional incapacity, or final conviction of or pleading guilty or nolo contendere to a felony for purposes of determining whether an application filed or a certificate issued under sections 81-1401 to 81-1414.10 should be denied, suspended, or revoked;

(i) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of the registration period under section 29-4005; or

(j) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act.

(6) Except as otherwise provided for the notice in subsection (1) of this section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

Source: Laws 1971, LB 680, § 19; Laws 1993, LB 564, § 1; Laws 1994, LB 677, § 1; Laws 1995, LB 401, § 1; Laws 1997, LB 310, § 1; Laws 1998, Spec. Sess., LB 1, § 3; Laws 2002, LB 1054, § 6; Laws 2003, LB 685, § 2; Laws 2004, LB 1005, § 3; Laws 2005,

LB 53, § 3; Laws 2005, LB 713, § 3; Laws 2009, LB285, § 2; Laws 2012, LB817, § 2; Laws 2013, LB265, § 30.
Effective date May 26, 2013.

Cross References

Child Care Licensing Act, see section 71-1908.
Children's Residential Facilities and Placing Licensure Act, see section 71-1924.
Sex Offender Registration Act, see section 29-4001.

CHAPTER 30

DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

ARTICLE 26

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

PART 1
GENERAL PROVISIONS

PART 3
GUARDIANS OF INCAPACITATED PERSONS

PART 4
PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

PART 1

GENERAL PROVISIONS

30-2601 Definitions and use of terms.

Unless otherwise apparent from the context, in the Nebraska Probate Code:

(1) Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself;

(2) A protective proceeding is a proceeding under the provisions of section 30-2630 to determine that a person cannot effectively manage or apply his or her estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief;

(3) A protected person is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) A ward is a person for whom a guardian has been appointed. A minor ward is a minor for whom a guardian has been appointed solely because of minority;

(5) Full guardianship means the guardian has been granted all powers which may be conferred upon a guardian by law;

(6) Limited guardianship means any guardianship which is not a full guardianship; and

(7) For purposes of article 26 of the Nebraska Probate Code, interested person means children, spouses, those persons who would be the heirs if the ward or person alleged to be incapacitated died without leaving a valid will who are adults and any trustee of any trust executed by the ward or person alleged to be incapacitated. After the death of a ward, interested person also includes the personal representative of a deceased ward's estate, the deceased ward's heirs in an intestate estate, and the deceased ward's devisees in a testate estate. The meaning of interested person as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. If there are no persons identified as interested persons above, then interested person shall also include any person or entity named as a devisee in the most recently executed will of the ward or person alleged to be incapacitated.

Source: Laws 1974, LB 354, § 219, UPC § 5-101; Laws 1997, LB 466, § 5; Laws 2011, LB157, § 32; Laws 2013, LB172, § 1.
Effective date September 6, 2013.

PART 3

GUARDIANS OF INCAPACITATED PERSONS

30-2624 Visitor; qualifications.

A visitor shall be trained in law, nursing, social work, mental health, gerontology, or developmental disabilities and shall be an officer, employee, or special appointee of the court with no personal interest in the proceedings.

Any qualified person may be appointed visitor of a proposed ward, except that it shall be unlawful for any owner, part owner, manager, administrator, or employee, or any spouse of an owner, part owner, manager, administrator, or employee of a nursing home, room and board home, convalescent home, group care home, or institution providing residential care to any person with a physical disability, with an intellectual disability, with an infirmity, or who is aged to be appointed visitor of any such person residing, being under care, receiving treatment, or being housed in any such home or institution within the State of Nebraska.

The court shall select the visitor who has the expertise to most appropriately evaluate the needs of the person who is allegedly incapacitated.

The court shall maintain a current list of persons trained in or having demonstrated expertise in the areas of mental health, intellectual disability, drug abuse, alcoholism, gerontology, nursing, and social work, for the purpose of appointing a suitable visitor.

Source: Laws 1974, LB 354, § 242, UPC § 5-308; Laws 1982, LB 428, § 8; Laws 2013, LB23, § 5.
Effective date September 6, 2013.

30-2628 General powers, rights, and duties of guardian; inventory.

(a) Except as limited by section 30-2620, a guardian of an incapacitated person has the same powers, rights, and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as may be specified by order of the court:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, a guardian is entitled to custody of the person of his or her ward and may establish the ward's place of abode within this state or, with court permission, outside of this state. When establishing the ward's place of abode, a guardian shall make every reasonable effort to ensure that the placement is the least restrictive alternative. A guardian shall authorize a placement to a more restrictive environment only after careful evaluation of the need for such placement. The guardian may obtain a professional evaluation or assessment that such placement is in the best interest of the ward.

(2) If entitled to custody of his or her ward, a guardian shall make provision for the care, comfort, and maintenance of his or her ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, a guardian shall take reasonable care of his or her ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his or her ward is in need of protection.

(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical, psychiatric, psychological, or other professional care, counsel, treatment, or service. When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of the ward expressed prior to incompetency to the extent allowable by law. Notwithstanding this provision or any other provision of the Nebraska Probate Code, the ward may authorize the release of financial, medical, and other confidential records pursuant to sections 20-161 to 20-166.

(4) If no conservator for the estate of the ward has been appointed, a guardian shall, within thirty days after appointment, prepare and file with the appointing court a complete inventory of the ward's estate together with the guardian's oath or affirmation that the inventory is complete and accurate so far as the guardian is informed. The guardian shall mail a copy thereof by first-class mail to the ward, if the ward can be located and has attained the age of fourteen years, and to all other interested persons as defined in section 30-2601. The guardian shall file with the court a certificate of mailing showing that copies were sent to all interested persons by first-class mail along with a form to send back to the court that indicates if such person wants to continue receiving notifications about the proceedings. The guardian shall keep suitable records of the guardian's administration and exhibit the same on request of any interested person. To the extent a guardian, who has not been named a conservator, has possession or control of the ward's estate, the guardian shall file with the court an updated inventory every year along with a certificate of mailing showing that copies were sent to all interested persons and, if a bond has been required, to the bonding company by first-class mail.

(5) If no conservator for the estate of the ward has been appointed, a guardian may:

(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such person's duty;

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but a guardian may not use funds from his or her ward's estate for room and board which the guardian or the guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. A guardian must exercise care to conserve any excess for the ward's needs; and

(iii) Exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property when authorized by a court acting under the authority of subsection (f) of section 30-3854. In acting under the authority of subsection (f) of section 30-3854, the court shall proceed in the same manner as provided under subdivision (3) of section 30-2637.

(6) A guardian is required to report the condition of his or her ward and of the estate which has been subject to the guardian's possession or control, at least every year and as required by the court or court rule. The court shall receive from any interested person, for a period of thirty days after the filing of the guardian's report, any comments with regard to the need for continued guardianship or amendment of the guardianship order. If the court has reason to believe that additional rights should be returned to the ward or assigned to the guardian, the court shall set a date for a hearing and may provide all protections as set forth for the original finding of incapacity and appointment of a guardian.

(7) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in the Nebraska Probate Code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(c) Nothing in subdivision (a)(3) of this section or in any other part of this section shall be construed to alter the decisionmaking authority of an attorney in fact designated and authorized under sections 30-3401 to 30-3432 to make health care decisions pursuant to a power of attorney for health care.

Source: Laws 1974, LB 354, § 246, UPC § 5-312; Laws 1982, LB 428, § 11; Laws 1993, LB 782, § 11; Laws 1997, LB 466, § 11; Laws 2003, LB 130, § 130; Laws 2011, LB157, § 39; Laws 2013, LB172, § 2.
Effective date September 6, 2013.

PART 4

PROTECTION OF PROPERTY OF PERSONS
UNDER DISABILITY AND MINORS

30-2647 Conservator; duties; inventory and records.

Within thirty days after appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that the inventory is complete and accurate so far as he or she is informed. The conservator shall mail a copy thereof by first-class mail to the protected person, if the protected person can be located and has attained the age of fourteen years, and to all other interested persons as defined in section 30-2601. The conservator shall file with the court a certificate of mailing showing that copies were sent to all interested persons by first-class mail along with a form to send back to the court that indicates if such person wants to continue receiving notifications about the proceedings. Every conservator shall file an updated inventory with the annual accounting required under section 30-2648. The conservator shall keep suitable records of his or her administration and exhibit the same on request of any interested person.

Source: Laws 1974, LB 354, § 265, UPC § 5-418; Laws 2011, LB157, § 44; Laws 2013, LB172, § 3.
Effective date September 6, 2013.

ARTICLE 38

NEBRASKA UNIFORM TRUST CODE

PART 3
REPRESENTATION

PART 6
REVOCABLE TRUSTS

PART 3

REPRESENTATION

30-3823 (UTC 302) Holder of power of appointment or power to terminate an interest.

(UTC 302) The holder of a power of appointment or other power to terminate an interest may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

Source: Laws 2003, LB 130, § 23; Laws 2013, LB38, § 1.
Operative date January 1, 2014.

PART 6

REVOCABLE TRUSTS

30-3855 (UTC 603) Rights and duties.

(UTC 603) (a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) While the trust is irrevocable and during the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section and the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

(c) While the trust is irrevocable and during the period the interest of any beneficiary not having a present interest may be terminated by the exercise of a power of appointment or other power, the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

Source: Laws 2003, LB 130, § 55; Laws 2004, LB 999, § 27; Laws 2005, LB 533, § 43; Laws 2013, LB38, § 2.
Operative date January 1, 2014.

CHAPTER 31
DRAINAGE

Article.
1. Drainage by County Authorities. 31-113.

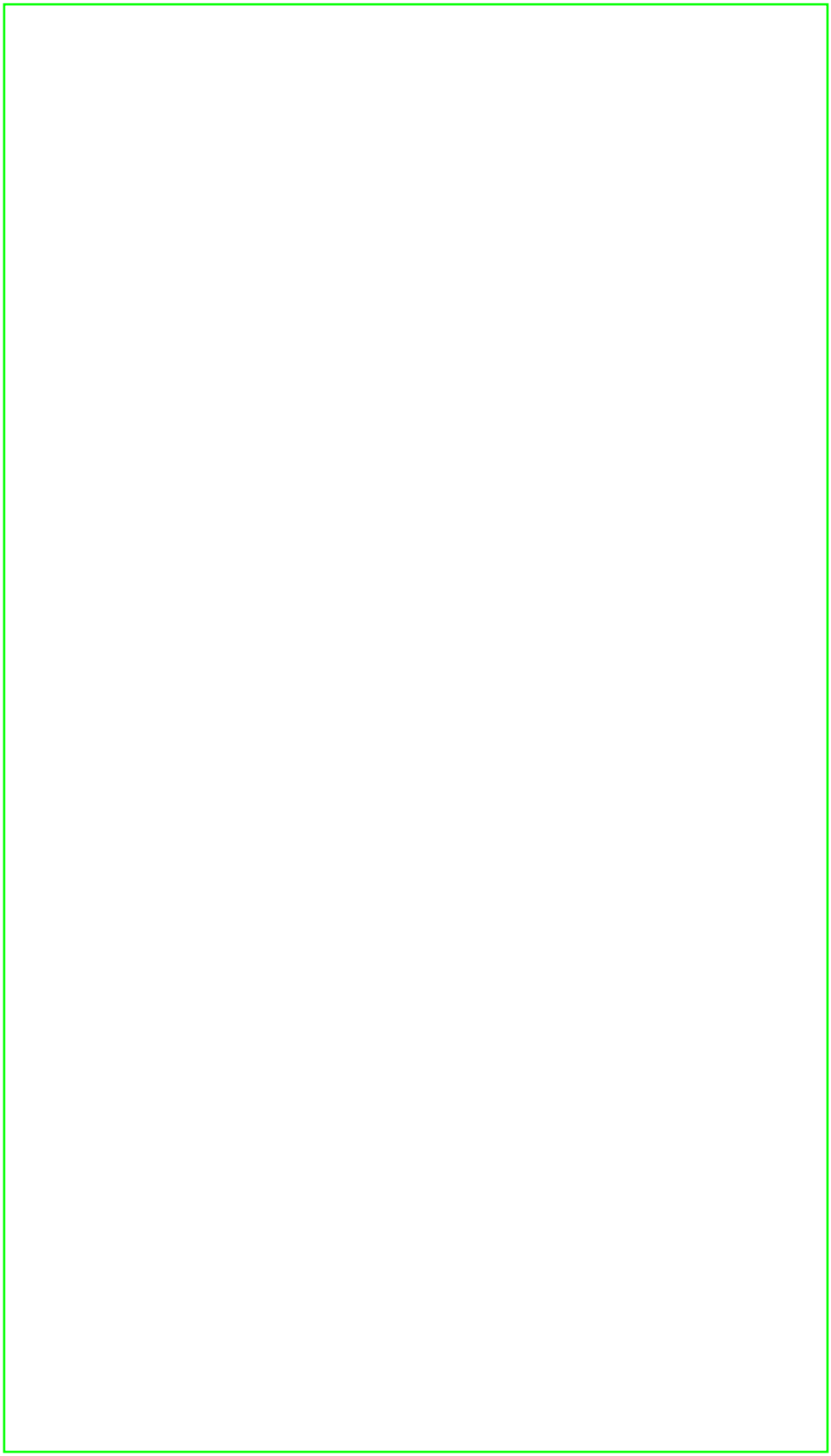
ARTICLE 1
DRAINAGE BY COUNTY AUTHORITIES

Section
31-113. Drainage improvements; allowance of compensation and assessment of damages; when and how made.

31-113 Drainage improvements; allowance of compensation and assessment of damages; when and how made.

The county board on actual view of the premises shall fix and allow such compensation for land appropriated and assess such damages as will in its judgment accrue from the construction of the improvement to each person or corporation making application as provided by section 31-112 and without such application to each person with an intellectual disability, person with a mental disorder, or minor owning lands taken or affected by such improvement.

Source: Laws 1881, c. 51, § 13, p. 240; Laws 1911, c. 140, § 13, p. 457; R.S.1913, § 1730; C.S.1922, § 1677; C.S.1929, § 31-113; R.S. 1943, § 31-113; Laws 1986, LB 1177, § 13; Laws 2013, LB23, § 6.
Effective date September 6, 2013.



CHAPTER 32
ELECTIONS

Article.
1. General Provisions and Definitions. 32-101.
2. Election Officials.
   (f) Guidelines for Election Workers. 32-243.
5. Officers and Issues.
   (a) Offices and Officeholders. 32-512, 32-545.
   (b) Local Elections. 32-552, 32-554.
   (c) Vacancies. 32-570.
6. Filing and Nomination Procedures. 32-606 to 32-633.
8. Notice, Publication, and Printing of Ballots. 32-808.
9. Voting and Election Procedures. 32-933, 32-942.
10. Counting and Canvassing Ballots. 32-1005 to 32-1008.
16. Campaign Finance Limitations. Repealed.

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

Section
32-101. Act, how cited.

32-101 Act, how cited.

Sections 32-101 to 32-1551 shall be known and may be cited as the Election Act.

Source: Laws 1994, LB 76, § 1; Laws 1995, LB 337, § 1; Laws 1995, LB 514, § 1; Laws 1996, LB 964, § 1; Laws 1997, LB 764, § 8; Laws 2001, LB 768, § 1; Laws 2002, LB 1054, § 7; Laws 2003, LB 181, § 1; Laws 2003, LB 358, § 1; Laws 2003, LB 359, § 1; Laws 2003, LB 521, § 3; Laws 2005, LB 401, § 2; Laws 2005, LB 566, § 1; Laws 2010, LB951, § 1; Laws 2013, LB299, § 1; Laws 2013, LB349, § 1.
Effective date September 6, 2013.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB299, section 1, with LB349, section 1, to reflect all amendments.

ARTICLE 2
ELECTION OFFICIALS

(f) GUIDELINES FOR ELECTION WORKERS

Section
32-243. Secretary of State; develop and publish guidelines for election workers; contents.

(f) GUIDELINES FOR ELECTION WORKERS

32-243 Secretary of State; develop and publish guidelines for election workers; contents.

The Secretary of State shall develop and publish guidelines for election workers appointed pursuant to sections 32-220 to 32-240. The guidelines shall

include provisions for the conduct of election workers with regard to the conduct of elections on election day. The guidelines may cover other conduct with regard to election workers and, in that regard, shall take into account variations in counties with regards to election workers appointed under sections 32-221 to 32-228 which apply to counties which have an election commissioner as provided in section 32-207 or 32-211 and election workers appointed under sections 32-230 to 32-240 which apply to counties which do not have an election commissioner. The guidelines shall be instructional in nature and shall not be construed to bind election commissioners or county clerks.

Source: Laws 2013, LB299, § 2.
Effective date September 6, 2013.

ARTICLE 5

OFFICERS AND ISSUES

(a) OFFICES AND OFFICEHOLDERS

Section
32-512. Public power district; public power and irrigation district; board of directors; nonpartisan ballot; terms; qualifications; qualified voters.
32-545. Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.

(b) LOCAL ELECTIONS

32-552. Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.
32-554. Village, county, school district, or certain cities; elections at large or by district or ward; procedure.

(c) VACANCIES

32-570. School board; vacancy; how filled.

(a) OFFICES AND OFFICEHOLDERS

32-512 Public power district; public power and irrigation district; board of directors; nonpartisan ballot; terms; qualifications; qualified voters.

(1) After the selection of the original board of directors of a public power district as provided for in sections 70-803 and 70-805 or a district as provided for in sections 70-604 and 70-609, their successors shall be nominated and elected on the nonpartisan ballot, except that in districts receiving annual gross revenue of less than forty million dollars, the candidates for the board of directors shall not appear on the ballot in the primary election. The term of each elected director shall be not more than six years or until his or her successor is elected and qualified. Candidates for the board of directors shall meet the qualifications found in sections 70-610 and 70-619.

(2) Registered voters residing within the chartered territory and registered voters duly certified in accordance with section 70-604.03 shall be qualified to vote in the district as certified pursuant to section 70-611. The registered voters of a subdivision created under subsection (1) of section 70-612 may only cast their ballots for candidates for directors to be elected from such subdivision and for candidates for directors to be elected at large from the whole district. The registered voters of a subdivision created under subsection (2) or (3) of section 70-612 may only cast their ballots for candidates for directors to be elected from such subdivision.

Source: Laws 1994, LB 76, § 108; Laws 2013, LB646, § 1.
Effective date September 6, 2013.

32-545 Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.

(1) A member of the board of education of a Class V school district shall be elected from each district provided for in section 32-552. Such election shall be held on the date provided in subsection (3) or (4) of this section. The members of such board of education shall meet the qualifications found in sections 79-543 and 79-552.

(2) The term of office of each member serving on February 12, 2013, expires on the fourth Monday after such election in 2013.

(3) At the election on the date provided in section 14-201 for the election of elective officers of a city of the metropolitan class for 2013, members of the board shall be elected to serve for terms as provided in subsection (4) of this section, from and including the fourth Monday after their election or until their successors are elected and qualified.

(4)(a) In 2013, candidates from all districts for election to such board of education shall be nominated at the primary election held for nomination of candidates for city council pursuant to section 14-204. Candidates for election to such board of education shall be nominated upon a nonpartisan ballot.

(b) In 2014, candidates for election to such board of education from even-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take office on the first Monday in January 2015. Terms of the members elected from such even-numbered districts in 2013 shall expire on such date. In 2016, candidates for election to such board of education from odd-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take office on the first Monday in January 2017. Terms of the members elected from odd-numbered districts in 2013 shall expire on such date. Thereafter, all members shall be nominated at the statewide primary election and elected at the statewide general election, shall take office on the first Monday in January following their election, and shall serve terms of four years or until their successors are elected and qualified. Candidates for election to such board of education shall be nominated upon the nonpartisan ballot.

Source: Laws 1994, LB 76, § 141; Laws 1996, LB 900, § 1044; Laws 2013, LB125, § 1.
Effective date February 12, 2013.

(b) LOCAL ELECTIONS

32-552 Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.

(1) At least five months prior to an election, the governing board of any political subdivision requesting the adjustment of the boundaries of election districts shall provide written notification to the election commissioner or county clerk of the need and necessity of his or her office to perform such adjustments.

(2) After the next federal decennial census, the election commissioner of the county in which the greater part of a Class IV school district is situated shall, subject to review by the school board, divide the school district into seven

numbered districts, substantially equal in population as determined by the most recent federal decennial census. The election commissioner shall consider the location of schools within the district and their boundaries. The election commissioner shall adjust the boundaries of the election districts, subject to final review and adjustment by the school board, to conform to changes in the territory and population of the school district and also following each federal decennial census. Except when specific procedures are otherwise provided, section 32-553 shall apply to all Class IV school districts.

(3) For purposes of election of members to the board of education of a Class V school district:

(a)(i) The Legislature hereby divides such school district into nine numbered election districts of compact and contiguous territory and of as nearly equal population as may be practical. Each election district shall be entitled to one member on the board of education of such Class V school district. The Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census. The numbers and boundaries of the election districts are designated and established by a map identified and labeled as OPS-13-002, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2013, LB125. Such districts are drawn using the boundaries of the Class V school district as they existed on February 12, 2013; (ii) the Clerk of the Legislature shall transfer possession of the map referred to in subdivision (a)(i) of this subsection to the Secretary of State and the election commissioner of the county in which the greater part of the school district is situated on February 12, 2013; (iii) when questions of interpretation of such election district boundaries arise, the map referred to in subdivision (a)(i) of this subsection in possession of such election commissioner shall serve as the indication of the legislative intent in drawing the election district boundaries; (iv) the Secretary of State and such election commissioner shall also have available for viewing on his or her web site the map referred to in subdivision (a)(i) of this subsection identifying the boundaries for such election districts; and (v) the twelve numbered districts in existence on January 1, 2013, shall remain unchanged until the terms of members elected at the election in May 2013 begin; and

(b) After the next federal decennial census after February 12, 2013, the election commissioner of the county in which the greater part of a Class V school district is situated shall divide the school district into nine numbered districts of compact and contiguous territory and of as nearly equal population as may be practical. The election commissioner shall adjust the boundaries of such districts, subject to final review and adjustment by the school board, to conform to changes in the territory of the school district and also following each federal decennial census.

Source: Laws 1994, LB 76, § 148; Laws 1997, LB 764, § 49; Laws 2002, LB 935, § 5; Laws 2013, LB125, § 2.
Effective date February 12, 2013.

32-554 Village, county, school district, or certain cities; elections at large or by district or ward; procedure.

(1)(a) Any city not under a home rule charter, village, county, or school district nominating and electing members to its governing board at large may,

either by majority vote of the governing body or by petition of registered voters pursuant to subsection (2) of this section, submit, at a general election, the question of nominating and electing members to its governing board by district or ward.

(b) Any city not under a home rule charter, village, county having not more than three hundred thousand inhabitants, or school district nominating and electing members to its governing board by district or ward may, either by majority vote of the governing body or by petition of registered voters pursuant to subsection (2) of this section, submit, at a general election, the question of nominating and electing members to its governing board at large.

(c) Any city of the first class, except a city having adopted the commissioner or city manager plan of government, nominating and electing members to its governing body by ward may, either by ordinance by majority vote of the governing body or by petition of registered voters pursuant to subsection (2) of this section, submit, at a general election, the question of nominating and electing some of the members to its governing body by ward and some at large. No more than four members of the city council may be elected on an at-large basis, and at least four members of the city council shall be elected by ward. The ordinance of the governing body or petition shall specify the number of at-large members to be elected. At the first election in which one or more at-large members are to be elected to the city council, the members shall be elected to serve for initial terms of office of the following lengths: (i) If one at-large member is to be elected, he or she shall serve for a four-year term; (ii) if two at-large members are to be elected, the candidate receiving the highest number of votes shall be elected to serve for a four-year term and the other elected member shall be elected to serve for a two-year term; (iii) if three at-large members are to be elected, the two candidates receiving the highest number of votes shall be elected to serve for four-year terms and the other elected member shall be elected to serve for a two-year term; and (iv) if four at-large members are to be elected, the two candidates receiving the highest number of votes shall be elected to serve for four-year terms and the other elected members shall be elected to serve for two-year terms. Following the initial term of office, all at-large council members shall be elected to serve for four-year terms. No candidate may file as both an at-large candidate and a candidate by ward at the same election.

(2) Petitions for submission of the question shall be signed by registered voters of the city, village, county, or school district desiring to change the procedures for electing the governing board of the city, village, county, or school district. The petition or petitions shall be signed by registered voters equal in number to twenty-five percent of the votes cast for the person receiving the highest number of votes in the city, village, county, or school district at the preceding general election for electing the last member or members to its governing board. Each sheet of the petition shall have printed the full and correct copy of the question as it will appear on the official ballot. The petitions shall be filed with the county clerk or election commissioner not less than seventy days prior to the date of the general election, and no signatures shall be added or removed from the petitions after they have been so filed. Petitions shall be verified as provided in section 32-631. If the petition or petitions are found to contain the required number of valid signatures, the county clerk or election commissioner shall place the question on a separate ballot to be issued

to the registered voters of the city, village, county, or school district entitled to vote on the question.

(3)(a) Any city, village, county, or school district voting to change from nominating and electing the members of its governing board by district or ward to nominating and electing some or all of such members at large shall notify the public and instruct the filing officer to accept the appropriate filings on an at-large basis. Candidates to be elected at large shall be nominated and elected on an at-large basis at the next primary and general election following submission of the question.

(b) Any city, village, county, or school district voting to change from nominating and electing the members of its governing board at large to nominating and electing by district or ward shall notify the public and instruct the filing officer to accept all filings by district or ward. Candidates shall be nominated and elected by district or ward at the next primary and general election following submission of the question. When district or ward elections have been approved by the majority of the electorate, the governing board of any city, village, county, or school district approving such question shall establish districts substantially equal in population as determined by the most recent federal decennial census except as provided in subsection (2) of section 32-553.

(4) Except as provided in section 14-201, each city not under a home rule charter, village, county, and school district which votes to nominate and elect members to its governing board by district or ward shall establish districts or wards so that approximately one-half of the members of its governing board may be nominated and elected from districts or wards at each election. Districts or wards shall be created not later than October 1 in the year following the general election at which the question was voted upon. If the governing board fails to draw district boundaries by October 1, the procedures set forth in section 32-555 shall be followed.

Source: Laws 1994, LB 76, § 150; Laws 1997, LB 595, § 3; Laws 1997, LB 764, § 50; Laws 2001, LB 730, § 4; Laws 2003, LB 444, § 4; Laws 2005, LB 566, § 30; Laws 2013, LB299, § 3.
Effective date September 6, 2013.

(c) VACANCIES

32-570 School board; vacancy; how filled.

(1) A vacancy in the membership of a school board shall occur as set forth in section 32-560 or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the district for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. The resignation of a member or any other reason for a vacancy shall be made a part of the minutes of the school board. The school board shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the election commissioner or county clerk and (b) by a notice published in a newspaper of general circulation in the school district.

(2) A person appointed to fill a vacancy on the school board of a Class I school district by the remaining members of the board shall hold office until the beginning of the next school year. A board member of a Class I school district elected to fill a vacancy at a regular or special school district meeting shall

serve for the remainder of the unexpired term or until a successor is elected and qualified.

(3) Except as provided in subsection (4) of this section, a vacancy in the membership of a school board of a Class II, III, IV, or VI school district resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board. If the vacancy occurs in a Class II school district prior to July 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is elected at such general election for the remainder of the unexpired term. If the vacancy occurs in a Class III, IV, or VI school district prior to February 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is nominated at the next primary election and elected at the following general election for the remainder of the unexpired term. If the vacancy occurs on or after the applicable deadline, the appointment shall be for the remainder of the unexpired term. A registered voter appointed or elected pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(4) Any vacancy in the membership of a school board of a school district described in section 79-549 which does not nominate candidates at a primary election and elect members at the following general election shall be filled by appointment of a qualified registered voter by the remaining members of the board. If the vacancy occurs at least twenty days prior to the first regular caucus to be held during the term that was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the first regular caucus and at least twenty days prior to the second regular caucus to be held during the term that was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the second regular caucus held during the term that was vacated or after such caucus, the appointment shall be for the remainder of the unexpired term.

(5) A vacancy in the membership of a school board of a Class V school district resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term. A registered voter appointed pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(6) If any school board fails to fill a vacancy on the board, the vacancy may be filled by election at a special election or school district meeting called for that purpose. Such election or meeting shall be called in the same manner and subject to the same procedures as other special elections or school district meetings.

(7) If there are vacancies in the offices of one-half or more of the members of a school board, the Secretary of State shall conduct a special school district election to fill such vacancies.

Source: Laws 1994, LB 76, § 166; Laws 1999, LB 272, § 15; Laws 2010, LB965, § 1; Laws 2012, LB878, § 3; Laws 2013, LB125, § 3. Effective date February 12, 2013.

ARTICLE 6
FILING AND NOMINATION PROCEDURES

32-606 Candidate filing form; filing period.

(1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and February 15 prior to the date of the primary election, except for candidates for election in 2013 to the board of education of a Class V school district. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. Incumbent and nonincumbent candidates for election in 2013 to the board of education of a Class V school district and all other candidates shall file for office between December 1 and March 1 prior to the date of the primary election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, the school board of a Class II school district, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between December 1 and July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office between December 1 and August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

Source: Laws 1994, LB 76, § 174; Laws 1996, LB 967, § 2; Laws 1997, LB 764, § 54; Laws 1999, LB 802, § 12; Laws 2007, LB641, § 3;

Laws 2009, LB392, § 7; Laws 2011, LB449, § 4; Laws 2011, LB550, § 1; Laws 2013, LB125, § 4.
Effective date February 12, 2013.

32-620 President and Vice President; candidates; certification; new political party; how treated; requirements; nonpartisan status; filing; application; contents.

(1) Partisan candidates for the offices of President and Vice President of the United States on the general election ballot shall be certified to the Governor and Secretary of State by the national nominating convention as provided by law.

(2) Candidates for the offices of President and Vice President of the United States of newly established political parties may obtain general election ballot position by filing with the Secretary of State an application containing:

(a) The name or names to be printed on the ballot;

(b) The name of the political party;

(c) The written consent of the designated vice-presidential candidate to have his or her name printed on the ballot; and

(d) The names and addresses of the persons who will represent the applicant as presidential elector candidates together with the written consent of such persons to become candidates.

(3) Candidates for the offices of President and Vice President of the United States of nonpartisan status may obtain general election ballot position by filing with the Secretary of State:

(a) An application containing:

(i) The name or names to be printed on the ballot;

(ii) The status of the candidacy as nonpartisan;

(iii) The written consent of the designated vice-presidential candidate to have his or her name printed on the ballot; and

(iv) The names and addresses of the persons who will represent the applicant as presidential elector candidates together with the written consent of such persons to become candidates; and

(b) A petition signed by not less than two thousand five hundred registered voters. Such petitions shall conform to the requirements of section 32-628 and shall be filed with the Secretary of State by August 1 in the year of the presidential general election.

Source: Laws 1994, LB 76, § 188; Laws 1997, LB 764, § 64; Laws 2013, LB349, § 3.
Effective date September 6, 2013.

32-633 President; write-in campaign; filing; application; contents.

Any person engaged in or pursuing a write-in campaign for the office of President of the United States shall file with the Secretary of State a notarized affidavit of his or her intent together with an application containing:

(1) The name of the person pursuing the write-in campaign;

(2) The written consent of the designated vice-presidential candidate; and

(3) The names and addresses of the persons who will represent the applicant as presidential elector candidates together with the written consent of such persons to become candidates.

Source: Laws 2013, LB349, § 2.
Effective date September 6, 2013.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section
32-808. Ballots for early voting; delivery; special ballot; publication of application form.

32-808 Ballots for early voting; delivery; special ballot; publication of application form.

(1) Except as otherwise provided in section 32-939.02, ballots for early voting to be mailed pursuant to section 32-941 shall be ready for delivery to registered voters at least thirty-five days prior to each statewide primary or general election and at least fifteen days prior to all other elections.

(2) The election commissioner or county clerk shall not mail or issue any ballot for early voting if the election to which such ballot pertains has already been held.

(3) The election commissioner or county clerk shall publish in a newspaper of general circulation in the county an application form to be used by registered voters in making an application for a ballot for early voting after the ballots become available. The publication of the application shall not be required if the election is held by mail pursuant to sections 32-952 to 32-959.

Source: Laws 1994, LB 76, § 229; Laws 1996, LB 964, § 4; Laws 1997, LB 764, § 74; Laws 1999, LB 571, § 3; Laws 2005, LB 98, § 8; Laws 2007, LB646, § 5; Laws 2010, LB951, § 3; Laws 2013, LB271, § 1.
Effective date September 6, 2013.

Cross References

Absentee ballots for school bond elections, see section 10-703.01.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section
32-933. New or former resident; vote for President and Vice President; when eligible; procedure.
32-942. Registered voter anticipating absence on election day; right to vote; method; voter present in county; voting place.

32-933 New or former resident; vote for President and Vice President; when eligible; procedure.

(1) Any person listed in this subsection shall be eligible as a new resident to vote for President and Vice President of the United States at the statewide general election but for no other offices:

(a) Any citizen of the United States who is at least the constitutionally prescribed age of a voter and who comes into Nebraska after the voter

registration period is closed pursuant to section 32-302 for the purpose of making Nebraska his or her place of residence; and

(b) Any registered voter who moves from one county to another county within Nebraska after the close of the voter registration period.

(2) Any registered voter who moves from Nebraska to another state or to the District of Columbia for the purpose of making such new location his or her place of residence after the close of the voter registration period for such location shall be eligible as a former resident to vote for President and Vice President of the United States at the statewide general election but for no other offices.

(3) Any person described in subsection (1) of this section shall cast his or her ballot in the office of the election commissioner or county clerk at any time between the close of the voter registration period and the close of the polls on election day. Such ballots shall be available after the close of the voter registration period. Ballots for former residents under subsection (2) of this section shall be available thirty days prior to the election. The ballots may be voted in the office of the election commissioner or county clerk at any time between thirty days prior to the election and the close of the polls on election day, or the ballots may be mailed to the office and counted if they arrive before the close of the polls on election day.

Source: Laws 1994, LB 76, § 276; Laws 1997, LB 764, § 90; Laws 2002, LB 935, § 8; Laws 2013, LB271, § 2.
Effective date September 6, 2013.

32-942 Registered voter anticipating absence on election day; right to vote; method; voter present in county; voting place.

Any registered voter of this state who anticipates being absent from the county of his or her residence on the day of any election may appear in person before the election commissioner or county clerk not more than thirty days prior to the day of election and obtain his or her ballot. The registered voter shall vote in the office of the election commissioner or county clerk or shall return the ballot to the office not later than the closing of the polls on the day of the election. A registered voter who is present in the county on the day of the election and who chooses to vote on the day of the election shall vote at the polling place assigned to the precinct in which he or she resides unless he or she is returning a ballot for early voting or voting pursuant to section 32-943.

Source: Laws 1994, LB 76, § 285; Laws 2002, LB 935, § 10; Laws 2005, LB 98, § 14; Laws 2005, LB 566, § 44; Laws 2011, LB499, § 6; Laws 2013, LB271, § 3.
Effective date September 6, 2013.

ARTICLE 10
COUNTING AND CANVASSING BALLOTS

Section
32-1005. Write-in vote; when valid.
32-1007. Ballots; write-in votes; improper name; rejected.
32-1008. Write-in votes; totals; how reported.

32-1005 Write-in vote; when valid.

If the last name or a reasonably close spelling of the last name of a person engaged in or pursuing a write-in campaign pursuant to section 32-615 or

32-633 is written or printed on a line provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. Except as provided in section 32-1007, a write-in vote for a person who is not engaged in or pursuing a write-in campaign pursuant to section 32-615 or 32-633 shall not be counted.

Source: Laws 1994, LB 76, § 299; Laws 1999, LB 571, § 9; Laws 2003, LB 358, § 31; Laws 2013, LB349, § 4.
Effective date September 6, 2013.

32-1007 Ballots; write-in votes; improper name; rejected.

For members of a village board of trustees, township officers, or members of the school board of Class I or II school districts, if a first or generally recognized name and last name of a person is filled in on a line provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. If only the last name of a person is in the write-in space on the ballot and there is more than one person in the county having the same last name, the counting board shall reject the ballot for that office unless the last name is reasonably close to the proper spelling of the last name of a candidate engaged in or pursuing a write-in campaign pursuant to section 32-615. The counting board shall make the following notation on the rejected ballot: Rejected for the office of . . . . . , no first or generally recognized name.

Source: Laws 1994, LB 76, § 301; Laws 1999, LB 571, § 10; Laws 2001, LB 252, § 3; Laws 2003, LB 358, § 33; Laws 2013, LB349, § 5.
Effective date September 6, 2013.

32-1008 Write-in votes; totals; how reported.

If the write-in vote in the county for any particular office referred to in section 32-1007 or for a person pursuing a write-in campaign pursuant to section 32-615 or 32-633 totals less than five percent of the vote for such office in the county and the election commissioner or county clerk believes that such vote will not impact the outcome of the election, the number of write-in votes for that office may be counted and listed together as one total.

Source: Laws 1994, LB 76, § 302; Laws 1999, LB 571, § 11; Laws 2013, LB349, § 6.
Effective date September 6, 2013.

ARTICLE 16

CAMPAIGN FINANCE LIMITATIONS

Section
32-1601. Repealed. Laws 2013, LB 79, § 41.
32-1602. Repealed. Laws 2013, LB 79, § 41.
32-1603. Repealed. Laws 2013, LB 79, § 41.
32-1604. Repealed. Laws 2013, LB 79, § 41.
32-1604.01. Repealed. Laws 2013, LB 79, § 41.
32-1605. Repealed. Laws 2013, LB 79, § 41.
32-1606. Repealed. Laws 2013, LB 79, § 41.
32-1606.01. Repealed. Laws 2013, LB 79, § 41.
32-1607. Repealed. Laws 2013, LB 79, § 41.
32-1608. Repealed. Laws 2013, LB 79, § 41.

Section
32-1608.01. Repealed. Laws 2013, LB 79, § 41.
32-1608.02. Repealed. Laws 2013, LB 79, § 41.
32-1608.03. Repealed. Laws 2013, LB 79, § 41.
32-1609. Repealed. Laws 2013, LB 79, § 41.
32-1610. Repealed. Laws 2013, LB 79, § 41.
32-1611. Repealed. Laws 2013, LB 79, § 41.
32-1612. Repealed. Laws 2013, LB 79, § 41.
32-1613. Repealed. Laws 2013, LB 79, § 41.

32-1601 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1602 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1603 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1604 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1604.01 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1605 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1606 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1606.01 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1607 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1608 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1608.01 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1608.02 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1608.03 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1609 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1610 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1611 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1612 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

32-1613 Repealed. Laws 2013, LB 79, § 41.

Operative date January 1, 2014.

CHAPTER 37
GAME AND PARKS

Article.
3. Commission Powers and Duties.
   (a) General Provisions. 37-304 to 37-321.
4. Permits and Licenses.
   (a) General Permits. 37-422.
   (b) Special Permits and Licenses. 37-447 to 37-4,107.
5. Regulations and Prohibited Acts.
   (a) General Provisions. 37-501, 37-503.
   (d) Fish and Aquatic Organisms. 37-543, 37-546.
6. Enforcement. 37-604, 37-614.
10. Recreational Trails. 37-1016.
14. Nebraska Invasive Species Council. 37-1406.

ARTICLE 3
COMMISSION POWERS AND DUTIES

(a) GENERAL PROVISIONS

Section
37-304. Commission; rules and regulations; commission orders.
37-314. Commission; rules and regulations; commission orders; powers; public hearing; notice; seasons; opening and closing; powers of commission; violations; penalty.
37-321. Fish; emergency created by drying up of waters; permission to take by any means; order; violation; penalty.

(a) GENERAL PROVISIONS

37-304 Commission; rules and regulations; commission orders.

(1) The commission may adopt and promulgate rules and regulations, under the procedures set forth in the Administrative Procedure Act, governing the administration and use of all property, real and personal, under its ownership or control.

(2) The commission shall adopt and promulgate rules and regulations it deems necessary to administer the activities and facilities described in sections 37-305 to 37-313.

(3) The commission may pass, by majority vote, commission orders which govern (a) conservation orders, (b) seasons, (c) open and closed areas, and (d) bag limits as described in section 37-314.

Source: Laws 1998, LB 922, § 62; Laws 2013, LB499, § 1.
Effective date September 6, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

37-314 Commission; rules and regulations; commission orders; powers; public hearing; notice; seasons; opening and closing; powers of commission; violations; penalty.

(1) The commission may, in accordance with the Game Law, other provisions of law, and lawful rules and regulations, fix, prescribe, and publish rules and regulations regarding the methods or type, kind, and specifications of hunting, fur-harvesting, or fishing gear used in the taking of any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds. Such rules and regulations may be amended, modified, or repealed from time to time and shall be based upon investigation and available but reliable data relative to such limitations and standards.

(2) The commission may, in accordance with the Game Law, other provisions of law, and lawful rules and regulations, pass and publish commission orders regarding (a) conservation orders authorized by the United States Fish and Wildlife Service, (b) open seasons and closed seasons, either permanent or temporary, (c) bag limits, including the age, sex, species, or area of the state in which any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds may be taken, or (d) the taking of any particular kinds, species, or sizes of game, game fish, nongame fish, game animals, fur-bearing animals, and game birds in any designated waters or areas of this state. The commission may pass such commission orders after due investigation and having due regard to the distribution, abundance, economic value, breeding habits, migratory habits, and causes of depletion or extermination of the same in such designated waters or areas and having due regard to the volume of the hunting, fur harvesting, and fishing practiced therein and the climatic, seasonal, and other conditions affecting the protection, preservation, and propagation of the same in such waters or areas. The commission orders may be amended, modified, or repealed from time to time. Commission orders shall be based upon investigation and available but reliable data relative to such limitations and standards.

(3) The commission shall hold at least one public hearing in accordance with section 37-104 on each proposed commission order or amendment, modification, or repeal of a commission order and shall hold at least one public hearing in accordance with section 37-104, in addition to all other requirements of the Administrative Procedure Act, on each proposed rule and regulation or amendment, modification, or repeal of a rule or regulation. The commission shall give notice of such hearing to the public at least thirty days prior to the hearing by posting it on the commission's web site. No commission order shall be valid against any person until fifteen days after such order has been posted on the commission's web site. Each rule, regulation, amendment, modification, and repeal shall specify the date when it shall become effective and while it remains in effect shall have the force and effect of law.

(4) Regardless of the provisions of this section or of other provisions of the Game Law which empower the commission to set seasons on game birds, fish, or animals or provide the means and method by which such seasons are set or promulgated and regardless of the provisions of the Administrative Procedure Act, the commission may close or reopen any open season previously set on game birds, fish, or animals in all or any specific portion of the state. The commission shall only close or reopen such seasons by majority vote at a valid special meeting called under section 37-104 and other provisions of statutes regarding the holding of public meetings. Any closing or reopening of an open season previously set by the commission shall not be effective for at least twenty-four hours after such action by the commission. The commission shall make every effort to make available to all forms of the news media the

information on any opening or closing of any open season on game birds, fish, or animals previously set. The commission may only use this special provision allowing the commission to open or close game bird, fish, or animal seasons previously set in emergency situations in which the continuation of the open season would result in grave danger to human life or property or to bird, fish, or wild animal populations. The commission may also close or reopen any season established by a conservation order under the same provisions pertaining to closing and reopening seasons in this section.

(5) Any person violating the rules and regulations adopted and promulgated or commission orders passed pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1929, c. 112, III, § 1, p. 413; C.S.1929, § 37-301; Laws 1931, c. 70, § 1, p. 190; Laws 1937, c. 89, § 5, p. 292; C.S.Supp.,1941, § 37-301; Laws 1943, c. 94, § 5, p. 324; R.S. 1943, § 37-301; Laws 1957, c. 242, § 31, p. 844; Laws 1972, LB 777, § 4; Laws 1972, LB 1284, § 14; Laws 1975, LB 489, § 2; Laws 1981, LB 72, § 13; Laws 1989, LB 34, § 12; R.S.1943, (1993), § 37-301; Laws 1998, LB 922, § 72; Laws 1999, LB 176, § 14; Laws 2009, LB105, § 3; Laws 2013, LB499, § 2.
Effective date September 6, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

37-321 Fish; emergency created by drying up of waters; permission to take by any means; order; violation; penalty.

The secretary of the commission may, by order, authorize the taking of fish by any means and in any number whenever the secretary determines, pursuant to standards imposed by rules and regulations adopted and promulgated by the commission, that such action is necessary for proper fish management as a result of an emergency created by the drying up of any waters inhabited by fish. Such determination shall specify the waters in which such emergency action is desirable, and the authorization so granted shall extend to such waters and to no others. The taking of any fish in violation of this section shall be a Class V misdemeanor.

Source: Laws 1961, c. 174, § 7, p. 521; Laws 1977, LB 40, § 189; R.S.1943, (1993), § 37-503.06; Laws 1998, LB 922, § 79; Laws 2013, LB499, § 3.
Effective date September 6, 2013.

ARTICLE 4

PERMITS AND LICENSES

(a) GENERAL PERMITS

(b) SPECIAL PERMITS AND LICENSES

Section
37-448. Special deer depredation season; extension of existing deer hunting season; permit; issuance; fee; free permits; when issued.
37-450. Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.
37-455. Limited deer, antelope, wild turkey, or elk permit; conditions; fee.
37-490. Closed season.
37-492. Commission; rules and regulations; commission orders; limitations upon game breeding and controlled shooting areas.
37-4,107. Bullfrogs; fishing permit required; manner of taking.

(a) GENERAL PERMITS

37-422 Special daily fishing permits; fee; form; requirements; commission; establish; educational fishing project permits.

(1) The commission may require special daily fishing permits on areas designated by it and subject to intensive fishery management. Such permits may be vended by mechanical or electronic methods. The commission may establish the fee, form, and requirements of such special daily fishing permit, and establish rules and regulations and commission orders pursuant to section 37-314 governing seasons, limits, methods of taking, open or closed waters, and such other regulations and commission orders as it deems necessary on such designated areas. Such special daily fishing permit shall be required of any and all persons fishing on the designated area and shall be the only fishing permit required thereon. The commission may only issue the permits authorized by this section on staffed areas or on portions of staffed areas under its ownership or control which are intensively managed or stocked for a high level of fish production.

(2) An educational fishing project permit may be issued to any instructor of a university, college, or high school and his or her students participating in an educational fishing project. Such persons shall be exempt from the payment of any fees provided by the Game Law for the privilege of fishing in Nebraska while participating in the project. Such exemption shall not extend to the privilege of commercial fishing or to the privilege of fishing for any species of fish on which an open season is limited to a restricted number of permits or to special permits for a restricted area. The commission shall adopt and promulgate rules and regulations necessary to carry out this subsection.

Source: Laws 1967, c. 212, § 1, p. 573; R.S.1943, (1993), § 37-204.02; Laws 1998, LB 922, § 132; Laws 1999, LB 176, § 26; Laws 2013, LB499, § 4.
Effective date September 6, 2013.

(b) SPECIAL PERMITS AND LICENSES

37-447 Permit to hunt deer; commission; powers; issuance; fee; violation; penalty.

(1) The commission may issue permits for the hunting of deer and adopt and promulgate rules and regulations and pass commission orders pursuant to section 37-314 to prescribe limitations for the hunting, transportation, and possession of deer. The commission may offer multiple-year permits or combinations of permits at reduced rates. The commission may specify by rule and regulation the information to be required on applications for such permits.

Rules and regulations for the hunting, transportation, and possession of deer may include, but not be limited to, rules and regulations as to the type, caliber, and other specifications of firearms and ammunition used and specifications for bows and arrows used. Such rules and regulations may further specify and limit the method of hunting deer and may provide for dividing the state into management units or areas, and the commission may enact different deer hunting regulations for the different management units pertaining to sex, species, and age of the deer hunted.

(2) The number of such permits may be limited as provided by the rules and regulations of the commission, and except as provided in section 37-454, the permits shall be allocated in an impartial manner. Whenever the commission deems it advisable to limit the number of permits issued for any or all management units, the commission shall, by rules and regulations, determine eligibility to obtain such permits. In establishing eligibility, the commission may give preference to persons who did not receive a permit or a specified type of permit during the previous year or years.

(3) Such permits may be issued to allow deer hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting will not be detrimental to the proper preservation of wildlife in Nebraska in such forest, reserves, or areas.

(4)(a) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-nine dollars for residents and not more than two hundred fourteen dollars for nonresidents for each permit issued under this section except as otherwise provided in subdivision (b) of this subsection and subsection (6) of this section.

(b) The fee for a statewide buck-only permit shall be no more than two and one-half times the amount of a regular deer permit. The commission may provide different fees for different species.

(5)(a) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission.

(b) In management units specified by the commission, the commission may issue nonresident permits after resident preference has been provided by allocating at least eighty-five percent of the available permits to residents. The commission may require a predetermined application period for permit applications in specified management units. Such permits shall be issued after a reasonable period for making application, as established by the commission, has expired. When more valid applications are received for a designated management unit than there are permits available, such permits shall be allocated on the basis of a random drawing. All valid applications received during the predetermined application period shall be considered equally in any such random drawing without regard to time of receipt of such applications by the commission.

(6) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth deer permit.

(7) Any person violating the rules and regulations adopted and promulgated or commission orders passed pursuant to this section shall be guilty of a Class

II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1945, c. 85, § 1, p. 305; Laws 1947, c. 133, § 1, p. 376; Laws 1949, c. 103, § 1(1), p. 282; Laws 1951, c. 109, § 1, p. 517; Laws 1953, c. 124, § 1, p. 389; Laws 1957, c. 141, § 1, p. 477; Laws 1959, c. 156, § 1, p. 584; Laws 1969, c. 292, § 1, p. 1063; Laws 1972, LB 777, § 3; Laws 1974, LB 767, § 1; Laws 1976, LB 861, § 6; Laws 1979, LB 437, § 1; Laws 1981, LB 72, § 11; Laws 1984, LB 1001, § 1; Laws 1985, LB 557, § 2; Laws 1993, LB 235, § 13; Laws 1994, LB 1088, § 4; Laws 1995, LB 583, § 2; Laws 1995, LB 862, § 1; Laws 1996, LB 584, § 6; Laws 1997, LB 107, § 2; R.S.Supp.,1997, § 37-215; Laws 1998, LB 922, § 157; Laws 1999, LB 176, § 42; Laws 2003, LB 306, § 4; Laws 2005, LB 162, § 15; Laws 2007, LB299, § 7; Laws 2009, LB105, § 15; Laws 2013, LB94, § 1; Laws 2013, LB499, § 5. Effective date September 6, 2013.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB94, section 1, with LB499, section 5, to reflect all amendments.

37-448 Special deer depredation season; extension of existing deer hunting season; permit; issuance; fee; free permits; when issued.

(1) Subject to rules and regulations adopted and promulgated by the commission, the secretary of the commission may designate, by order, special deer depredation seasons or extensions of existing deer hunting seasons. The secretary may designate a depredation season or an extension of an existing deer hunting season whenever he or she determines that deer are causing excessive property damage. The secretary shall specify the number of permits to be issued, the species of deer allowed to be taken, the bag limit for such species including deer for donation in accordance with the deer donation program established pursuant to sections 37-1501 to 37-1510, the beginning and ending dates for the depredation season or hunting season extension, shooting hours, the length of the depredation season or hunting season extension, and the geographic area in which hunting will be permitted. Hunting during a special depredation season or hunting season extension shall be limited to residents, and the rules and regulations shall allow use of any weapon permissible for use during the regular deer season.

(2) The depredation season may commence not less than five days after the first public announcement that the depredation season has been established. Permits shall be issued in an impartial manner at a location determined by the secretary. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for a special depredation season permit. The commission shall use the income from the sale of special depredation season permits for abatement of damage caused by deer. The commission shall also provide for an unlimited number of free permits for the taking of antlerless deer upon request to any person owning or operating at least twenty acres of farm or ranch land within the geographic area in which hunting will be permitted and to any member of the immediate family of any such person as defined in subdivision (2)(a) of section 37-455. A free permit shall be valid only within such area and only during the designated deer

depredation season. Receipt of a depredation season permit shall not in any way affect a person's eligibility for a regular season permit.

Source: Laws 1998, LB 922, § 158; Laws 2008, LB1162, § 4; Laws 2010, LB836, § 2; Laws 2012, LB928, § 3; Laws 2013, LB499, § 6. Effective date September 6, 2013.

37-450 Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting elk and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer.

(2) The commission shall, pursuant to section 37-327, establish and charge (a) a nonrefundable application fee of not more than eight dollars and fifty cents for a resident elk permit and not to exceed three times such amount for a nonresident elk permit and (b) a fee of not more than one hundred forty-nine dollars and fifty cents for each resident elk permit issued and not to exceed three times such amount for each nonresident elk permit issued.

(3) An applicant shall not be issued a resident elk permit that allows the harvest of an antlered elk more than once every five years. A person may only harvest one antlered elk in his or her lifetime except when harvesting an antlered elk with a limited permit to hunt elk pursuant to subdivision (1)(b) of section 37-455 or an auction or lottery permit pursuant to section 37-455.01.

(4) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of elk permits.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9; Laws 2009, LB105, § 17; Laws 2011, LB41, § 12; Laws 2013, LB94, § 2.
Effective date September 6, 2013.

37-455 Limited deer, antelope, wild turkey, or elk permit; conditions; fee.

(1) The commission may issue a limited permit for deer, antelope, wild turkey, or elk to a person who is a qualifying landowner or leaseholder and his or her immediate family as described in this section. The commission may issue nonresident landowner limited permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. A permit shall be valid during the predetermined period established by the commission pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457. Upon receipt of an application in proper form as prescribed by the rules and regulations of the commission, the commission may issue (a) a limited deer, antelope, or wild turkey permit valid for hunting on all of the land which is owned or leased by the qualifying landowner or leaseholder if such lands are identified in the application or (b) a limited elk permit valid for hunting on the entire elk management unit of which the land of the qualifying landowner or leaseholder included in the application is a part.

(2)(a) The commission shall adopt and promulgate rules and regulations prescribing procedures and forms and create requirements for documentation by an applicant or permittee to determine whether the applicant or permittee is a Nebraska resident and is a qualifying landowner or leaseholder of the described property or is a member of the immediate family of such qualifying landowner or leaseholder. The commission may adopt and promulgate rules and regulations that create requirements for documentation to designate one qualifying landowner among partners of a partnership or officers or shareholders of a corporation that owns or leases eighty acres or more of farm or ranch land for agricultural purposes and among beneficiaries of a trust that owns or leases eighty acres or more of farm or ranch land for agricultural purposes. Only a person who is a qualifying landowner or leaseholder and such person's immediate family may apply for a limited permit. An applicant may apply for no more than one permit per species per year except as otherwise provided in the rules and regulations of the commission. For purposes of this section, immediate family means and is limited to a husband and wife and their children or siblings sharing ownership in the property.

(b) The conditions applicable to permits issued pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may pass commission orders for species harvest allocation pertaining to the sex and age of the species harvested which are different for a limited permit than for other hunting permits. For purposes of this section, white-tailed deer and mule deer shall be treated as one species.

(3)(a) To qualify for a limited permit to hunt deer or antelope, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. The fee for a limited permit to hunt deer or antelope shall be one-half the fee for the regular permit for such species.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited deer or antelope permit. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by three hundred twenty. The fee for such a permit to hunt deer or antelope shall be one-half the fee for a nonresident permit to hunt such species.

(c) The commission may adopt and promulgate rules and regulations providing for the issuance of an additional limited deer permit to a qualified individual for the taking of a deer without antlers at a fee equal to or less than the fee for the original limited permit.

(4)(a) To qualify for a limited permit to hunt wild turkey, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as

the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per season for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one limited permit per season. The fee for a limited permit to hunt wild turkey shall be one-half the fee for the regular permit to hunt wild turkey.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited permit to hunt wild turkey. Only one limited wild turkey permit per three hundred twenty acres may be issued annually for each wild turkey season under this subdivision. The fee for such a permit to hunt shall be one-half the fee for a nonresident permit to hunt wild turkey.

(5) To qualify for a limited permit to hunt elk, (a) the applicant shall be (i) a Nebraska resident who owns three hundred twenty acres or more of farm or ranch land for agricultural purposes, (ii) a Nebraska resident who leases six hundred forty acres or more of farm or ranch land for agricultural purposes or has a leasehold interest and an ownership interest in farm or ranch land used for agricultural purposes which when added together totals at least six hundred forty acres, (iii) a nonresident of Nebraska who owns at least one thousand two hundred eighty acres of farm or ranch land for agricultural purposes, or (iv) a member of such owner's or lessee's immediate family and (b) the qualifying farm or ranch land of the applicant shall be within an area designated as an elk management zone by the commission in its rules and regulations. An applicant shall not be issued a limited bull elk permit more than once every three years, and the commission may give preference to a person who did not receive a limited elk permit or a specified type of limited elk permit during the previous years. The fee for a resident landowner limited permit to hunt elk shall not exceed one-half the fee for the regular permit to hunt elk. The fee for a nonresident landowner limited permit to hunt elk shall not exceed three times the cost of a resident elk permit. The number of applications allowed for limited elk permits for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by the minimum acreage requirements established for the property. No more than one person may qualify for the same described property.

Source: Laws 1969, c. 761, § 1, p. 2878; Laws 1974, LB 767, § 2; Laws 1975, LB 270, § 1; Laws 1983, LB 170, § 2; Laws 1985, LB 557, § 5; Laws 1993, LB 235, § 14; Laws 1996, LB 584, § 7; Laws 1997, LB 107, § 3; Laws 1997, LB 173, § 3; R.S.Supp.,1997, § 37-215.03; Laws 1998, LB 922, § 165; Laws 2001, LB 111, § 9; Laws 2002, LB 1003, § 23; Laws 2003, LB 305, § 16; Laws 2004, LB 1149, § 1; Laws 2009, LB105, § 19; Laws 2013, LB94, § 3; Laws 2013, LB499, § 7.
Effective date September 6, 2013.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB94, section 3, with LB499, section 7, to reflect all amendments.

37-490 Closed season.

No person shall hunt any upland game birds and mallard ducks upon such breeding and controlled shooting area except between September 1 and April 1 of each year, except that turkeys may be hunted throughout the open season and dog training or dog trial activities may be permitted as prescribed by rules and regulations of the commission or commission orders.

Source: Laws 1957, c. 152, § 7, p. 494; Laws 1967, c. 224, § 1, p. 599; Laws 1987, LB 206, § 3; R.S.1943, (1993), § 37-907; Laws 1998, LB 922, § 200; Laws 2011, LB41, § 21; Laws 2013, LB499, § 8. Effective date September 6, 2013.

37-492 Commission; rules and regulations; commission orders; limitations upon game breeding and controlled shooting areas.

The commission may adopt and promulgate rules and regulations and pass commission orders for carrying out, administering, and enforcing the provisions of sections 37-484 to 37-496. The commission shall limit the number of areas proposed for licensing so that the total acreage licensed for game breeding and controlled shooting areas in any one county does not exceed two percent of the total acreage of the county in which the areas are sought to be licensed. The commission shall not require distances between boundaries of game breeding and controlled shooting areas to be greater than two miles. No license shall be issued for any area whereon mallard ducks are shot or to be shot if the area lies within three miles of any river or within three miles of any lake with an area exceeding three acres, except that a license may be issued for such area for the shooting of upland game birds only, and the rearing or shooting of mallard ducks thereon is prohibited.

Source: Laws 1957, c. 152, § 10, p. 495; Laws 1969, c. 297, § 3, p. 1071; R.S.1943, (1993), § 37-910; Laws 1998, LB 922, § 202; Laws 2011, LB41, § 22; Laws 2013, LB499, § 9.
Effective date September 6, 2013.

37-4,107 Bullfrogs; fishing permit required; manner of taking.

Bullfrogs may be taken, possessed, transported, and used under rules and regulations adopted and promulgated by the commission or commission orders setting forth seasons, bag limits, open areas, and manner of taking established by the commission pursuant to section 37-314, by the holder of a fishing permit. In taking bullfrogs, an artificial light may be used.

Source: Laws 1957, c. 139, § 8, p. 468; Laws 1973, LB 331, § 4; R.S.1943, (1993), § 37-226; Laws 1998, LB 922, § 217; Laws 2013, LB499, § 10.
Effective date September 6, 2013.

ARTICLE 5

REGULATIONS AND PROHIBITED ACTS

(a) GENERAL PROVISIONS

Section
37-501. Game and fish; bag and possession limit; violation; penalty.
37-503. Game; illegal possession; exception.

(d) FISH AND AQUATIC ORGANISMS

37-543. Offenses relating to fish; exceptions; rules and regulations; commission orders; violation; penalty.

(a) GENERAL PROVISIONS

37-501 Game and fish; bag and possession limit; violation; penalty.

Except as otherwise provided by the Game Law, rules and regulations of the commission, or commission orders, it shall be unlawful for any person in any one day to take or have in his or her possession at any time a greater number of game birds, game animals, or game fish of any one kind than as established pursuant to section 37-314. Any person violating this section shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least two hundred dollars for violations relating to turkeys, small game animals, or game fish.

Source: Laws 1929, c. 112, III, § 4, p. 416; C.S.1929, § 37-304; Laws 1933, c. 69, § 1, p. 308; Laws 1937, c. 89, § 7, p. 294; C.S.Supp.,1941, § 37-304; R.S.1943, § 37-303; Laws 1989, LB 34, § 13; R.S.1943, (1993), § 37-303; Laws 1998, LB 922, § 221; Laws 2009, LB105, § 27; Laws 2013, LB499, § 11.
Effective date September 6, 2013.

37-503 Game; illegal possession; exception.

It shall be unlawful for anyone to have in his or her possession, except during the open season thereon, any unmounted game except as allowed by the Game Law or the rules and regulations adopted and promulgated and commission orders passed by the commission.

Source: Laws 1945, c. 79, § 1(2), p. 295; Laws 1994, LB 1165, § 8; R.S.Supp.,1996, § 37-304.01; Laws 1998, LB 922, § 223; Laws 1999, LB 176, § 66; Laws 2011, LB41, § 26; Laws 2013, LB499, § 12.
Effective date September 6, 2013.

(d) FISH AND AQUATIC ORGANISMS

37-543 Offenses relating to fish; exceptions; rules and regulations; commission orders; violation; penalty.

(1) It shall be unlawful for any person to take any fish, except as provided in this section, by means other than fishing with hook and line.

(2) It shall be unlawful for any person to use, while fishing in this state in any lake, pond, or reservoir or in their inlets, outlets, and canals within one-half mile of such lake, pond, or reservoir, more than two lines, and neither line shall have more than two hooks. This subsection shall not apply to ice fishing.

(3) It shall be unlawful for any person to take any fish by snagging fish externally by hook and line, except in the Missouri River, as provided by rules and regulations of the commission.

(4) It shall be unlawful for any person to use, while fishing in any waters in this state, a line having more than five hooks thereon or lines having more than fifteen hooks in the aggregate. One hook means a single, double, or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one hook.

(5) Nongame fish may be taken by spearing or by bow and arrow as provided by rules and regulations of the commission.

(6) Sport fish may be taken by bow and arrow as provided by rules and regulations of the commission.

(7) The commission may adopt and promulgate rules and regulations to allow, control, regulate, or prohibit the use of seines, nets, and other devices and methods in the taking of fish. The commission may adopt and promulgate rules and regulations as to the method of taking, possession, transporting, or selling and pass commission orders regarding bag limits and size limits of all species of fish.

(8) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 2, p. 426; C.S.1929, § 37-502; Laws 1931, c. 72, § 1, p. 193; Laws 1939, c. 40, § 1, p. 197; Laws 1941, c. 72, § 7, p. 304; C.S.Supp.,1941, § 37-502; R.S.1943, § 37-502; Laws 1945, c. 80, § 1, p. 298; Laws 1955, c. 134, § 1, p. 384; Laws 1957, c. 147, § 1, p. 484; Laws 1959, c. 159, § 1, p. 590; Laws 1961, c. 169, § 6, p. 504; Laws 1963, c. 205, § 1, p. 658; Laws 1963, c. 206, § 1, p. 661; Laws 1965, c. 204, § 1, p. 608; Laws 1967, c. 216, § 9, p. 585; Laws 1975, LB 489, § 3; Laws 1981, LB 73, § 1; Laws 1993, LB 235, § 22; R.S.1943, (1993), § 37-502; Laws 1998, LB 922, § 263; Laws 1999, LB 176, § 75; Laws 2001, LB 130, § 3; Laws 2013, LB499, § 13. Effective date September 6, 2013.

37-546 Offenses relating to baitfish; violation; penalty.

(1) It shall be unlawful (a) to take baitfish except for use as bait or (b) for any person except an aquaculturist or bait dealer to buy, sell, barter, offer to buy, sell, or barter, or have in his or her possession baitfish for any purpose whatsoever except for use as bait. No baitfish shall be taken from reservoirs, lakes, or bayous except as provided in rules and regulations of the commission.

(2) The commission may adopt and promulgate rules and regulations and pass commission orders pursuant to section 37-314 pertaining to the taking, transportation, possession, buying, selling, and bartering of baitfish.

(3) Any person violating this section or the rules and regulations adopted and promulgated or commission orders passed under this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 3, p. 426; C.S.1929, § 37-503; Laws 1943, c. 94, § 12, p. 330; R.S.1943, § 37-503; Laws 1957, c. 148, § 1, p. 486; Laws 1961, c. 174, § 1, p. 516; Laws 1967, c. 216, § 10, p. 586; Laws 1973, LB 331, § 6; Laws 1981, LB 73, § 2; Laws 1993, LB 235, § 23; Laws 1994, LB 1165, § 9; Laws 1997, LB 752, § 89; R.S.Supp.,1997, § 37-503; Laws 1998, LB 922, § 266; Laws 1999, LB 176, § 77; Laws 2013, LB499, § 14. Effective date September 6, 2013.

ARTICLE 6
ENFORCEMENT

Section
37-604. Enforcement of Game Law; duties; fees and mileage.
37-614. Revocation and suspension of permits; grounds.

37-604 Enforcement of Game Law; duties; fees and mileage.

It shall be the duty of all conservation officers, sheriffs, deputy sheriffs, and other peace officers to make prompt investigation of and arrests for any violations of the Game Law observed or reported by any person and to cause a complaint to be filed before a court having jurisdiction thereof in case there seems just ground for such complaint and evidence procurable to support the same. Upon the filing of such a complaint, it shall be the duty of such officer to render assistance in the prosecution of the party complained against. Sheriffs, deputy sheriffs, and other peace officers making arrests and serving warrants under this section shall receive fees and mileage under the provisions of the statutes of the state with mileage to be computed at the rate provided for county sheriffs in section 33-117. Conservation officers shall serve writs and processes, civil and criminal, when such writs and processes pertain to enforcement of duties imposed by law on the commission. Any officer or person purporting to enforce the laws of this state or rules and regulations adopted and promulgated or commission orders passed pursuant thereto shall on the demand of any person apprehended by him or her exhibit to such person his or her written commission of authority as such enforcement officer.

Source: Laws 1998, LB 922, § 294; Laws 1999, LB 176, § 86; Laws 2013, LB499, § 15.
Effective date September 6, 2013.

37-614 Revocation and suspension of permits; grounds.

(1) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court shall, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Carelessly or purposely killing or causing injury to livestock with a firearm or bow and arrow;

(b) Purposely taking or having in his or her possession a number of game animals, game fish, game birds, or fur-bearing animals exceeding twice the limit established pursuant to section 37-314;

(c) Taking any species of wildlife protected by the Game Law during a closed season in violation of section 37-502;

(d) Resisting or obstructing any officer or any employee of the commission in the discharge of his or her lawful duties in violation of section 37-609; and

(e) Being a habitual offender of the Game Law.

(2) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Hunting, fishing, or fur harvesting without a permit in violation of section 37-411;

(b) Hunting from a vehicle, aircraft, or boat in violation of section 37-513, 37-514, 37-515, 37-535, or 37-538; and

(c) Knowingly taking any wildlife on private land without permission in violation of section 37-722.

(3) When a person pleads guilty to or is convicted of any violation of the Game Law, the rules and regulations of the commission, or commission orders not listed in subsection (1) or (2) of this section, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of one year.

Source: Laws 1998, LB 922, § 304; Laws 1999, LB 176, § 89; Laws 2007, LB299, § 16; Laws 2009, LB5, § 2; Laws 2013, LB499, § 16.
Effective date September 6, 2013.

ARTICLE 10

RECREATIONAL TRAILS

Section
37-1016. Cowboy Trail; Game and Parks Commission; lease or transfer of portions authorized.

37-1016 Cowboy Trail; Game and Parks Commission; lease or transfer of portions authorized.

The Game and Parks Commission may lease or otherwise transfer portions of the Cowboy Trail to a political subdivision. The commission may lease portions of the Cowboy Trail to a nonprofit organization. The lessee or transferee shall maintain the property at its own expense. Any such lease or transfer shall be subject to the requirements of the federal National Trails System Act, 16 U.S.C. 1241, as such act and section existed on January 1, 2013.

Source: Laws 2013, LB493, § 1.
Effective date September 6, 2013.

ARTICLE 14

NEBRASKA INVASIVE SPECIES COUNCIL

Section
37-1406. Adaptive management plan; completion; update; Nebraska Invasive Species Council; reports; subcommittees.

37-1406 Adaptive management plan; completion; update; Nebraska Invasive Species Council; reports; subcommittees.

(1) The adaptive management plan required under section 37-1404 shall be updated at least once every three years following its initial development. The plan shall be submitted to the Governor and the Agriculture Committee of the Legislature. The plan submitted to the committee shall be submitted electronically.

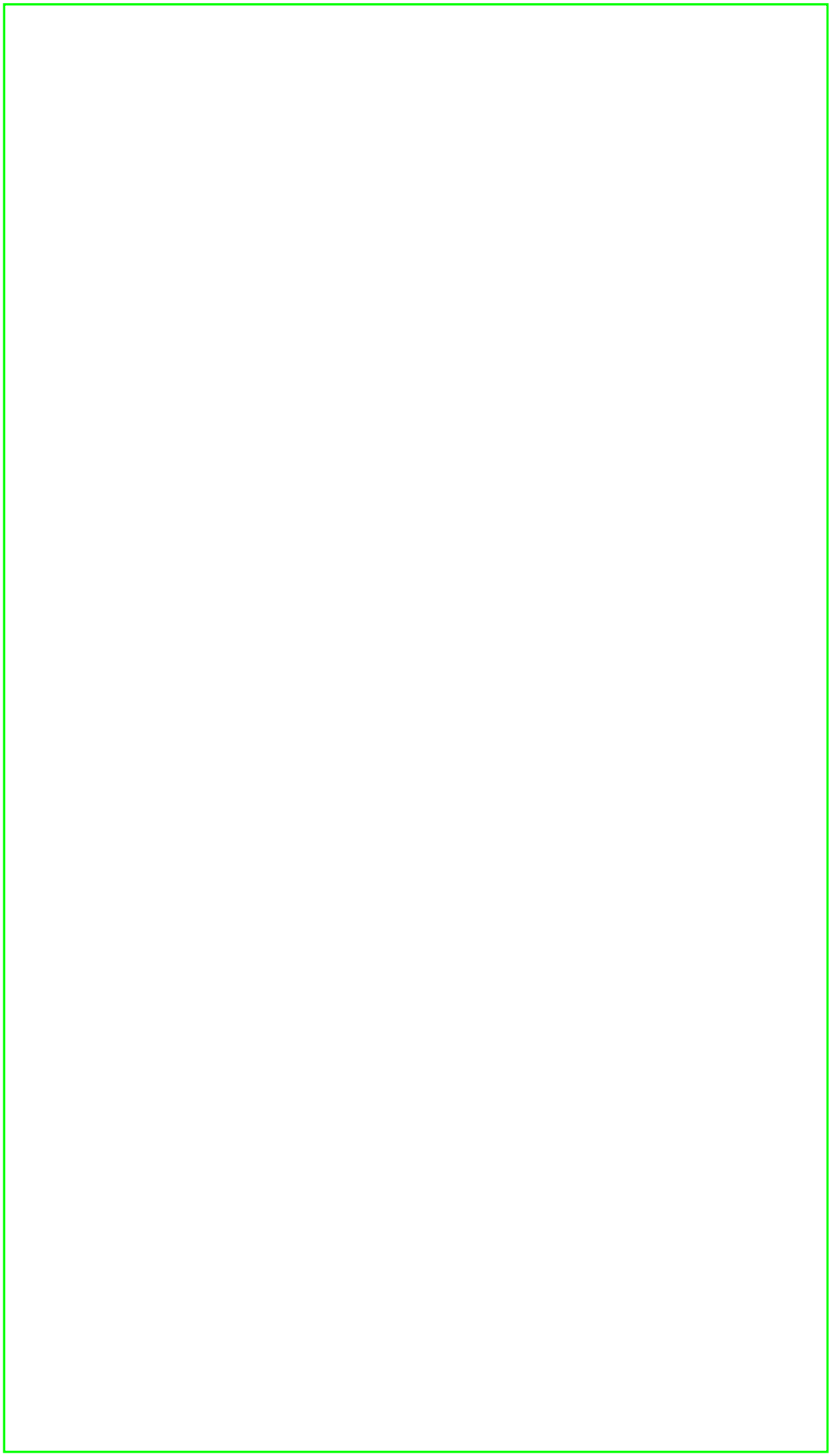
(2) The Nebraska Invasive Species Council shall submit an annual report of its activities to the Governor and the Agriculture Committee of the Legislature by December 15 of each year. The annual report shall include an evaluation of progress made in the preceding year. The report submitted to the committee shall be submitted electronically.

(3) The council shall complete the initial adaptive management plan within three years after April 6, 2012.

(4) Prior to the start of the 2015 legislative session, the council shall submit electronically a report to the Agriculture Committee of the Legislature that makes recommendations as to the extension or modification of the council.

(5) The council may establish advisory and technical subcommittees that the council considers necessary to aid and advise it in the performance of its functions.

Source: Laws 2012, LB391, § 16; Laws 2013, LB222, § 5.
Effective date May 8, 2013.



CHAPTER 38
HEALTH OCCUPATIONS AND PROFESSIONS

ARTICLE 11
DENTISTRY PRACTICE ACT

38-1130 Licensed dental hygienist; functions authorized; when; department; duties; Health and Human Services Committee; report.

(1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the dental hygiene functions listed in section 38-1131 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary charting and screening examinations; oral health education, including workshops and in-service training sessions on dental health; and all of the duties that any dental assistant is authorized to perform.

(3)(a) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services to children in a public health setting or in a health care or related facility: Oral prophylaxis to healthy children who do not require antibiotic premedication; pulp vitality testing; and preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department and (ii) providing evidence of current licensure and professional liability insurance coverage. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report authorized functions performed by him or her to the department on a form developed and provided by the department and (ii) advise the patient or recipient of services or his or her

authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(4)(a) The department may authorize a licensed dental hygienist who has completed three thousand hours of clinical experience to perform the following functions in the conduct of public health-related services to adults in a public health setting or in a health care or related facility: Oral prophylaxis; pulp vitality testing; and preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department, (ii) providing evidence of current licensure and professional liability insurance coverage, and (iii) providing evidence of three thousand hours of clinical experience. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report on a form developed and provided by the department authorized functions performed by him or her to the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(5) The department shall compile the data from the reports provided under subdivisions (3)(c)(i) and (4)(c)(i) of this section and provide an annual report to the Board of Dentistry and the State Board of Health.

(6) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other similar program or agency that serves primarily public health care program recipients.

(7) Within five years after September 6, 2013, the Health and Human Services Committee of the Legislature shall evaluate the services provided by dental hygienists pursuant to this section to ascertain the effectiveness of such services in the delivery of oral health care and shall provide a report on such evaluation to the Legislature. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 1986, LB 572, § 2; Laws 1996, LB 1044, § 415; Laws 1999, LB 800, § 5; R.S.1943, (2003), § 71-193.15; Laws 2007, LB247, § 24; Laws 2007, LB296, § 328; Laws 2007, LB463, § 463; Laws 2013, LB484, § 1.
Effective date September 6, 2013.

ARTICLE 14

FUNERAL DIRECTING AND EMBALMING PRACTICE ACT

Section
38-1425. Deceased persons; control of remains; interment; liability.

38-1425 Deceased persons; control of remains; interment; liability.

(1) Except as otherwise provided in subsection (2) of this section or section 71-20,121, the right to control the disposition of the remains of a deceased person, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests in the following persons in the order named:

(a) Any person authorized to direct the disposition of the decedent's body pursuant to a notarized affidavit authorizing such disposition and signed and sworn to by the decedent. Such an affidavit shall be sufficient legal authority for authorizing disposition without additional authorization from the decedent, the decedent's family, or the decedent's estate. Such person shall not be considered an attorney in fact pursuant to sections 30-3401 to 30-3432;

(b) The surviving spouse of the decedent;

(c) If the surviving spouse is incompetent or not available or if there is no surviving spouse, the decedent's surviving adult children. If there is more than one adult child, any adult child, after confirmation in writing of the notification of all other adult children, may direct the manner of disposition unless the funeral establishment or crematory authority receives written objection to the manner of disposition from another adult child;

(d) The decedent's surviving parents;

(e) The persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may direct the manner of disposition;

(f) A guardian of the person of the decedent at the time of such person's death;

(g) The personal representative of the decedent;

(h) The State Anatomical Board or county board in the case of an indigent person or any other person the disposition of whose remains is the responsibility of the state or county; or

(i) A representative of an entity described in section 38-1426 that has arranged with the funeral establishment or crematory authority to cremate a body part in the case of body parts received from such entity described in section 38-1426.

(2) If the decedent died during active military service, as provided in 10 U.S.C. 1481 (a)(1) through (8), in any branch of the United States armed forces, United States reserve forces, or national guard, the person authorized by the decedent to direct disposition pursuant to section 564 of Public Law 109-163, as listed on the decedent's United States Department of Defense record of emergency data, DD Form 93, or its successor form, shall take priority over all other persons described in subsection (1) of this section.

(3) A funeral director, funeral establishment, crematory authority, or crematory operator shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons described in this section if the funeral director or crematory authority or operator

reasonably believes such person is entitled to control the final disposition of the remains of the deceased person.

(4) The liability for the reasonable cost of the final disposition of the remains of the deceased person devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent and, in cases when the county board has the right to control disposition of the remains under subdivision (1)(h) of this section, upon the county in which death occurred from funds available for such purpose.

Source: Laws 1959, c. 325, § 1, p. 1186; Laws 1959, c. 326, § 1, p. 1189; Laws 1998, LB 1354, § 7; Laws 1999, LB 46, § 5; Laws 2003, LB 95, § 36; R.S.1943, (2003), § 71-1339; Laws 2007, LB463, § 561; Laws 2013, LB420, § 1.
Effective date May 8, 2013.

ARTICLE 21

MENTAL HEALTH PRACTICE ACT

Section
38-2121. License; required; exceptions.

38-2121 License; required; exceptions.

The requirement to be licensed as a mental health practitioner pursuant to the Uniform Credentialing Act in order to engage in mental health practice shall not be construed to prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;

(2) Alcohol and drug counselors who are licensed by the Division of Public Health of the Department of Health and Human Services and problem gambling counselors who are certified by the Department of Health and Human Services prior to July 1, 2013, or by the Nebraska Commission on Problem Gambling beginning on July 1, 2013, from practicing their profession. Such exclusion shall include students training and working under the supervision of an individual qualified under section 38-315;

(3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;

(4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(5) The delivery of mental health services by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;

(7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;

(8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons are not represented as being licensed mental health practitioners or their services are not represented as mental health practice; or

(9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Source: Laws 1993, LB 669, § 31; Laws 1994, LB 1210, § 99; Laws 1995, LB 275, § 5; Laws 1996, LB 1044, § 479; Laws 2004, LB 1083, § 114; R.S.Supp.,2006, § 71-1,312; Laws 2007, LB296, § 361; Laws 2007, LB463, § 739; Laws 2013, LB6, § 11. Operative date July 1, 2013.

ARTICLE 23

NURSE PRACTITIONER PRACTICE ACT

Section
38-2315. Nurse practitioner; functions; scope.

38-2315 Nurse practitioner; functions; scope.

(1) A nurse practitioner may provide health care services within specialty areas. A nurse practitioner shall function by establishing collaborative, consultative, and referral networks as appropriate with other health care professionals. Patients who require care beyond the scope of practice of a nurse practitioner shall be referred to an appropriate health care provider.

(2) Nurse practitioner practice means health promotion, health supervision, illness prevention and diagnosis, treatment, and management of common health problems and acute and chronic conditions, including:

(a) Assessing patients, ordering diagnostic tests and therapeutic treatments, synthesizing and analyzing data, and applying advanced nursing principles;

(b) Dispensing, incident to practice only, sample medications which are provided by the manufacturer and are provided at no charge to the patient; and

(c) Prescribing therapeutic measures and medications relating to health conditions within the scope of practice. Any limitation on the prescribing

authority of the nurse practitioner for controlled substances listed in Schedule II of section 28-405 shall be recorded in the integrated practice agreement established pursuant to section 38-2310.

(3) A nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty may manage the care of patients committed under the Nebraska Mental Health Commitment Act. Patients who require care beyond the scope of practice of a nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty shall be referred to an appropriate health care provider.

(4) A nurse practitioner may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the nurse practitioner and are not otherwise prohibited by law.

Source: Laws 1981, LB 379, § 18; Laws 1984, LB 724, § 14; Laws 1996, LB 414, § 25; Laws 2000, LB 1115, § 44; Laws 2005, LB 256, § 57; Laws 2006, LB 994, § 96; R.S.Supp.,2006, § 71-1721; Laws 2007, LB463, § 807; Laws 2012, LB1042, § 2; Laws 2013, LB243, § 1.
Effective date September 6, 2013.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

ARTICLE 24

NURSING HOME ADMINISTRATOR PRACTICE ACT

Section
38-2401. Act, how cited.
38-2402. Definitions, where found.
38-2404. Administrator or nursing home administrator, defined.
38-2410.01. Facility operated primarily for caring for persons with head injuries and associated disorders, defined.
38-2418. Licensed administrator; when required; provisional license.
38-2419. Nursing home administrator; license; issuance; qualifications; duties.
38-2420. Administrator-in-training program; mentoring program; certified preceptor; requirements.
38-2426. Administrator of facility operated primarily for caring for persons with head injuries and associated disorders; license required; qualifications; renewal.

38-2401 Act, how cited.

Sections 38-2401 to 38-2426 shall be known and may be cited as the Nursing Home Administrator Practice Act.

Source: Laws 2007, LB463, § 816; Laws 2013, LB42, § 1.
Effective date September 6, 2013.

38-2402 Definitions, where found.

For purposes of the Nursing Home Administrator Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2403 to 38-2416 apply.

Source: Laws 2007, LB463, § 817; Laws 2013, LB42, § 2.
Effective date September 6, 2013.

38-2404 Administrator or nursing home administrator, defined.

Administrator or nursing home administrator means any individual who meets the education and training requirements of section 38-2419 and is responsible for planning, organizing, directing, and controlling the operation of a nursing home or an integrated system or who in fact performs such functions, whether or not such functions are shared by one or more other persons. Notwithstanding this section or any other provision of law, the administrator of an intermediate care facility for persons with developmental disabilities may be either a licensed nursing home administrator or a qualified developmental disabilities professional.

Source: Laws 2007, LB463, § 819; Laws 2013, LB23, § 7.
Effective date September 6, 2013.

38-2410.01 Facility operated primarily for caring for persons with head injuries and associated disorders, defined.

Facility operated primarily for caring for persons with head injuries and associated disorders means a nursing home in which all or a majority of the persons served by the nursing home have head injuries and associated disorders.

Source: Laws 2013, LB42, § 3.
Effective date September 6, 2013.

38-2418 Licensed administrator; when required; provisional license.

Each nursing home within the state shall be operated under the supervision of an administrator duly licensed in the manner provided in the Nursing Home Administrator Practice Act. Each facility within the state operated primarily for caring for persons with head injuries and associated disorders shall be operated under the supervision of an administrator duly licensed in the manner provided in the Nursing Home Administrator Practice Act. If there is a vacancy in the position of licensed administrator of a nursing home, the owner, governing body, or other appropriate authority of the nursing home may select a person to apply for a provisional license in nursing home administration to serve as the administrator of such facility.

Source: Laws 1972, LB 1040, § 8; Laws 1980, LB 686, § 5; Laws 1988, LB 693, § 12; R.S.Supp.,1988, § 71-2045.04; R.S.1943, (2003), § 71-6062; Laws 2007, LB463, § 833; Laws 2013, LB42, § 4.
Effective date September 6, 2013.

38-2419 Nursing home administrator; license; issuance; qualifications; duties.

(1) The department shall issue a license to an applicant who submits (a) satisfactory evidence of completion of (i) an associate degree which includes the core educational requirements and an administrator-in-training program under a certified preceptor, (ii) a degree or an advanced degree and a mentoring program under a certified preceptor, (iii) a nursing degree, previous work experience in health care administration, and a mentoring program under a certified preceptor, (iv) a degree or an advanced degree in health care and previous work experience in health care administration, or (v) an associate degree which includes the core educational requirements, previous work expe-

rience, and a mentoring program under a certified preceptor, and (b) evidence of successful passage of the National Association of Boards of Examiners for Nursing Home Administration written examination.

(2) The department shall license administrators in accordance with the Nursing Home Administrator Practice Act and standards, rules, and regulations adopted and promulgated by the department, with the recommendation of the board. The license shall not be transferable or assignable.

(3) Each administrator shall be responsible for and oversee the operation of only one licensed facility or one integrated system, except that an administrator may make application to the department for approval to be responsible for and oversee the operations of a maximum of three licensed facilities if such facilities are located within two hours' travel time of each other or to act in the dual role of administrator and department head but not in the dual role of administrator and director of nursing. In reviewing the application, the department may consider the proximity of the facilities and the number of licensed beds in each facility. An administrator responsible for and overseeing the operations of any integrated system is subject to disciplinary action against his or her license for any regulatory violations within each system.

Source: Laws 1972, LB 1040, § 6; Laws 1980, LB 686, § 4; Laws 1988, LB 352, § 126; R.S.1943, (1986), § 71-2045.02; Laws 1988, LB 693, § 3; Laws 1989, LB 344, § 19; Laws 1989, LB 733, § 1; R.S.Supp.,1989, § 71-2041.02; Laws 1991, LB 58, § 1; Laws 1991, LB 456, § 38; Laws 1992, LB 1019, § 83; Laws 1993, LB 669, § 59; Laws 1994, LB 1223, § 74; Laws 1997, LB 608, § 23; Laws 1997, LB 752, § 193; Laws 1999, LB 411, § 2; Laws 2002, LB 1021, § 92; Laws 2002, LB 1062, § 56; Laws 2003, LB 242, § 133; Laws 2005, LB 246, § 2; R.S.Supp.,2006, § 71-6054; Laws 2007, LB463, § 834; Laws 2013, LB42, § 5.
Effective date September 6, 2013.

38-2420 Administrator-in-training program; mentoring program; certified preceptor; requirements.

(1) Except as provided in subdivision (1)(a)(iv) of section 38-2419 and section 38-2426, in order for a person to become licensed as a nursing home administrator, he or she shall complete an administrator-in-training program or a mentoring program. The administrator-in-training program shall occur in a nursing home under the direct supervision of a certified preceptor, and it may be gained as an internship which is part of an approved associate degree. A mentoring program shall occur in a nursing home under the supervision of a certified preceptor. The certified preceptor in a mentoring program need not be at such facility during the period of such supervision but shall be available to assist with questions or problems as needed. A mentoring program may be gained as an internship which is part of a degree or advanced degree. A person in a mentoring program may apply for a provisional license as provided in section 38-2423.

(2) An applicant may begin his or her administrator-in-training or mentoring program upon application to the department with the required fee, evidence that he or she has completed at least fifty percent of the core educational requirements, and evidence of an agreement between the certified preceptor and the applicant for at least six hundred forty hours of training and experi-

ence, to be gained in not less than four months. Such training shall occur in a Nebraska-licensed nursing home under a certified preceptor.

(3) The certified preceptor shall submit a report to the department by the fifth day of each month for the duration of the administrator-in-training or mentoring program, describing the nature and extent of training completed to date. At the conclusion of the program, the certified preceptor shall report to the department whether the applicant has successfully completed the board's approved course for such program. With the concurrence of the certified preceptor, the applicant may remain in such program until successfully completed or may reapply to enter another administrator-in-training or mentoring program.

(4)(a) The administrator-in-training or mentoring program shall occur under the supervision of a certified preceptor. An applicant to become a certified preceptor shall (i) be currently licensed as a nursing home administrator in the State of Nebraska, (ii) have three years of experience as a nursing home administrator in the five years immediately preceding certification, and (iii) complete a preceptor training course approved by the board.

(b) All preceptor certificates shall expire on December 31 of every fourth year beginning December 31, 2000. Before acting on an application for renewal, the board shall review the performance of the applicant. Such review may include consideration of survey and complaint information, student evaluations, and any other related information deemed relevant by the board. The board may deny an application for renewal upon a finding that the applicant's performance has been unsatisfactory based on such review.

Source: Laws 1988, LB 693, § 4; Laws 1989, LB 733, § 2; R.S.Supp.,1989, § 71-2041.03; Laws 1991, LB 455, § 1; Laws 1992, LB 1019, § 84; Laws 1999, LB 411, § 3; Laws 2003, LB 242, § 134; R.S.1943, (2003), § 71-6055; Laws 2007, LB463, § 835; Laws 2013, LB42, § 6.
Effective date September 6, 2013.

38-2426 Administrator of facility operated primarily for caring for persons with head injuries and associated disorders; license required; qualifications; renewal.

(1) In order to qualify to function as the administrator of a facility operated primarily for caring for persons with head injuries and associated disorders, an individual shall be licensed as a nursing home administrator if he or she meets the requirements of this section. A license issued under this section permits the holder to serve as a nursing home administrator only in a facility operated primarily for caring for persons with head injuries and associated disorders.

(2) To receive a credential to practice nursing home administration for a facility operated primarily for caring for persons with head injuries and associated disorders, an individual shall:

(a) Have at least four years of experience working with persons with head injuries or severe physical disabilities, at least two of which were spent in an administrative capacity; and

(b) Either:

(i) Hold a credential as:

(A) A psychologist pursuant to the Uniform Credentialing Act, with at least a master's degree in psychology from an accredited college or university;

(B) A physician licensed pursuant to the Uniform Credentialing Act to practice medicine and surgery or psychiatry;

(C) An educator with at least a master's degree in education from an accredited college or university;

(D) A certified social worker, a certified master social worker, or a licensed mental health practitioner pursuant to the Uniform Credentialing Act;

(E) A physical therapist, an occupational therapist, or a speech-language pathologist pursuant to the Uniform Credentialing Act; or

(F) An administrator or executive of a health care facility as defined in section 71-413 who is a member in good standing with an organization that offers voluntary certification for the purpose of demonstrating managerial knowledge and experience for health care managers; or

(ii) Have at least eight years of experience working with persons with head injuries or severe physical disabilities, at least five of which were spent in an administrative capacity in a facility operated primarily for caring for persons with head injuries or severe physical disabilities.

(3) A license issued pursuant to this section shall be issued without examination and without the requirement of completion of an administrator-in-training or mentoring program. Such license may be renewed without the completion of any continuing competency requirements.

Source: Laws 2013, LB42, § 7.
Effective date September 6, 2013.

Cross References

Uniform Credentialing Act, see section 38-101.

ARTICLE 28
PHARMACY PRACTICE ACT

Section
38-2826.01. Long-term care facility, defined.
38-2845. Supervision, defined.
38-2847. Verification, defined.

38-2826.01 Long-term care facility, defined.

Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Source: Laws 2009, LB195, § 49; Laws 2013, LB23, § 8.
Effective date September 6, 2013.

Cross References

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

38-2845 Supervision, defined.

Supervision means the personal guidance and direction by a pharmacist of the performance by a pharmacy technician of authorized activities or functions

subject to verification by such pharmacist. Supervision of a pharmacy technician may occur by means of a real-time audiovisual communication system.

Source: Laws 2007, LB463, § 941; Laws 2013, LB326, § 1.
Effective date September 6, 2013.

38-2847 Verification, defined.

Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy. Verification shall occur by a pharmacist on duty in the facility, except that if a pharmacy technician performs authorized activities or functions to assist a pharmacist and the prescribed drugs or devices will be administered to persons who are patients or residents of a facility by a credentialed individual authorized to administer medications, verification may occur by means of a real-time audiovisual communication system.

Source: Laws 2007, LB463, § 943; Laws 2013, LB326, § 2.
Effective date September 6, 2013.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section
38-3330. Disclosure of information; restrictions.

38-3330 Disclosure of information; restrictions.

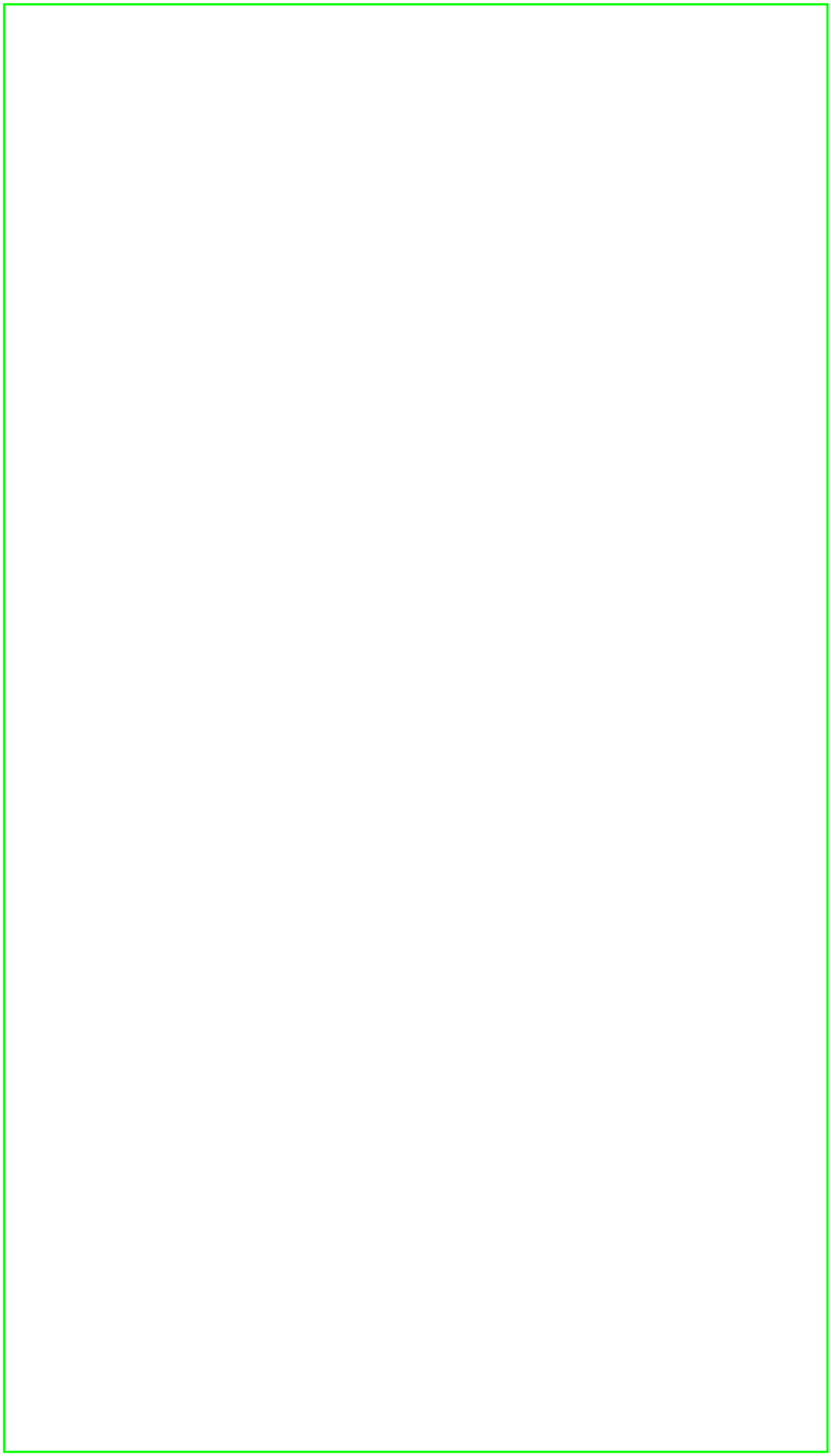
(1) Unless required by any state or local law for contagious or infectious disease reporting or other public health and safety purpose, no veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to disclose any information concerning the veterinarian's care of an animal except under a written authorization or other waiver by the veterinarian's client or pursuant to a court order or a subpoena. A veterinarian who releases information under a written authorization or other waiver by the client or pursuant to a court order or a subpoena is not liable to the client or any other person.

(2) The privilege provided by this section is waived to the extent that the veterinarian's client or the owner of the animal places the veterinarian's care and treatment of the animal or the nature and extent of injuries to the animal at issue in any civil or criminal proceeding.

(3) The privilege provided by this section is waived to the extent and for purposes of notifying any owner or manager of cattle that have a significant risk for exposure to bovine trichomoniasis. A veterinarian who releases information about the risk for exposure to bovine trichomoniasis is not liable to the client or any other person.

(4) For purposes of this section, veterinarian includes the employees or agents of the licensed veterinarian while acting for or on behalf of such veterinarian.

Source: Laws 2000, LB 833, § 5; R.S.1943, (2003), § 71-1,164; Laws 2007, LB463, § 1112; Laws 2013, LB423, § 3.
Effective date September 6, 2013.



CHAPTER 39
HIGHWAYS AND BRIDGES

ARTICLE 8
BRIDGES

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810 Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads, including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed one hundred thousand dollars. All contracts for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense of which shall exceed one hundred thousand dollars, shall be let by the county board to the lowest responsible bidder. All contracts for materials for repairing, erecting, and constructing bridges and approaches thereto or culverts or for the purchase of gravel for roads, the cost and expense of which exceed twenty thousand dollars, shall be let to the lowest responsible bidder, but the board may reject any and all bids submitted for such materials. Upon rejection of any bid or bids by the board of such a county, such board shall have power and authority to purchase materials to repair, erect, or construct the bridges of such county, approaches thereto, or culverts or to purchase gravel for roads. All contracts for bridge erection or repair, approaches thereto, culverts, or road improvements in excess of twenty thousand dollars shall require individual cost-accounting records on each individual project. The total costs of each such separate project shall be included in the annual reports to the Board of Public Roads Classifications and Standards as required by section 39-2120. All bids for the letting of contracts shall be deposited with the county clerk of such a county, opened by him or her in the presence of the county board, and filed in such clerk's office.

Source: Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943,

§ 39-810; Laws 1955, c. 159, § 1, p. 462; Laws 1969, c. 328, § 1, p. 1173; Laws 1975, LB 115, § 1; Laws 1988, LB 429, § 1; Laws 2013, LB623, § 1.
Effective date September 6, 2013.

Cross References

Authority of board to purchase materials, other provisions, see sections 39-818, 39-824, and 39-826.

ARTICLE 17

COUNTY ROADS. LAND ACQUISITION, ESTABLISHMENT, ALTERATION, SURVEY, RELOCATIONS, VACATION, AND ABANDONMENT

(a) LAND ACQUISITION

Section
39-1702. County road purposes, defined; property acquisition; gift; purchase; exchange; eminent domain; authority of county board; annexation by city or village; effect.

(a) LAND ACQUISITION

39-1702 County road purposes, defined; property acquisition; gift; purchase; exchange; eminent domain; authority of county board; annexation by city or village; effect.

(1) The county board is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interest therein, or any easements deemed to be necessary or desirable for present or future county road purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate.

(2) County road purposes, as referred to in subsection (1) of this section, shall include provisions for, but shall not be limited to, the following: (a) The establishment, construction, reconstruction, relocation, improvement, or maintenance of any county road. The right-of-way for such roads shall be of such width as is deemed necessary by the county board; (b) adequate drainage in connection with any road, cut, fill, channel change, or the maintenance thereof; (c) shops, offices, storage buildings and yards, and road maintenance or construction sites; (d) road materials, sites for the manufacture of road materials, and access roads to such sites; (e) the preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to county roads and the culture of trees and flora which may increase the scenic beauty of county roads; (f) roadside areas or parks adjacent to or near any county roads; (g) the exchange of property for other property to be used for rights-of-way or other purposes set forth in this subsection or subsection (1) of this section if the interest of the county will be served and acquisition costs thereby reduced; (h) the maintenance of an unobstructed view of any portion of a county road so as to promote the safety of the traveling public; (i) the construction and maintenance of stock trails and cattle passes; (j) the erection and maintenance of marking and warning signs and traffic signals; and (k) the construction and maintenance of sidewalks and road illumination.

(3) The county board may (a) designate and establish controlled-access facilities, (b) design, construct, maintain, improve, alter, and vacate such

facilities, and (c) regulate, restrict, or prohibit access to such facilities so as to best serve the traffic for which such facilities are intended. No road, street, or highway shall be opened into or connected with such facility without the consent of the county board. In order to carry out the purposes of this subsection, the county board may acquire, in public or private property, such rights of access as are deemed necessary. Such acquisitions may be by gift, devise, purchase, agreement, adverse possession, prescription, condemnation, or otherwise and may be in fee simple absolute or in any lesser estate or interest. An adjoining landowner shall not be denied reasonable means of egress and ingress. When a county road adjoins the corporate limits of any city or village, the powers granted in this subsection may be exercised by the governing body of such city or village.

(4) When a city or village annexes a county road, the powers that are granted to the county board in this section and any recorded or prescriptive easement held by the county on the annexed property for road purposes are transferred to and may be exercised by the governing body of the city or village.

Source: Laws 1957, c. 155, art. IV, § 2, p. 541; Laws 1973, LB 493, § 2; Laws 2013, LB377, § 1.
Effective date September 6, 2013.

ARTICLE 18

COUNTY ROADS. MAINTENANCE

Section
39-1802. Public roads; drainage facilities; construction and maintenance; authority of county board or road overseer; damage to property outside of right-of-way; notice.

39-1802 Public roads; drainage facilities; construction and maintenance; authority of county board or road overseer; damage to property outside of right-of-way; notice.

The county board shall have the authority to construct, maintain, and improve drainage facilities on the public roads of the county. The county board also shall have the authority to make channel changes, control erosion, and provide stream protection or any other control measures beyond the road right-of-way limits wherever it is deemed necessary in order to protect the roads and drainage facilities from damage. The county board or road overseer shall have the authority to enter upon private or public property for the purposes listed in this section. The county board or road overseer shall make a record of the condition of the premises at the time of entry upon the premises or a record of any claimed encroachment of the road right-of-way that can be used in the event of damages to private property. In case of any damage to the premises, the county board shall pay the record owner of the premises the amount of the damages. Upon failure of the landowner and county board to agree upon the amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided for in section 76-705. The county board or road overseer shall give the record owner of the premises ten days' notice of its intention to enter upon private property for purposes listed in this section or to modify, relocate, remove, or destroy any encroaching private property in the county road right-of-way for such purposes. Upon notice the record owner shall have five days to respond to the county board or road overseer. In the event of

an emergency or a threat to public health, safety, or welfare, the notice requirement of this section may be waived.

Source: Laws 1957, c. 155, art. V, § 2, p. 552; Laws 2013, LB386, § 1. Effective date September 6, 2013.

CHAPTER 42
HUSBAND AND WIFE

Article.
3. Divorce, Alimony, and Child Support.
(d) Domestic Relations Actions. 42-364, 42-374.

ARTICLE 3
DIVORCE, ALIMONY, AND CHILD SUPPORT

(d) DOMESTIC RELATIONS ACTIONS

Section
42-364. Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.
42-374. Annulment; conditions.

(d) DOMESTIC RELATIONS ACTIONS

42-364 Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.

(1)(a) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (i) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (ii) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

(b) The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the best interests of the child, as defined in the Parenting Act, and child support. Such determinations shall be made by incorporation into the decree of (i) a parenting plan developed by the parties, if approved by the court, or (ii) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act.

(c) The social security number of each parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money or cash medical support paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which child support money or cash medical support is used. Child support money or cash medical support paid to the party having physical custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support, cash medical support, or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support or cash medical support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue the court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made, the court shall conduct the termination of parental rights proceeding as provided in the Nebraska Juvenile Code.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting

plan shall be commenced by filing a complaint to modify. Such actions shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence. Service of process and other procedure shall comply with the requirements for a dissolution action.

(7) In any proceeding under this section relating to custody of a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

Source: Laws 1983, LB 138, § 1; Laws 1985, LB 612, § 1; Laws 1985, Second Spec. Sess., LB 7, § 16; Laws 1991, LB 457, § 3; Laws 1991, LB 715, § 1; Laws 1993, LB 629, § 21; Laws 1994, LB 490, § 1; Laws 1996, LB 1296, § 15; Laws 1997, LB 752, § 96; Laws 2004, LB 1207, § 25; Laws 2006, LB 1113, § 35; Laws 2007, LB554, § 32; Laws 2008, LB1014, § 32; Laws 2009, LB288, § 5; Laws 2010, LB901, § 1; Laws 2013, LB561, § 5. Effective date May 30, 2013.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Parenting Act, see section 43-2920.
Violation of custody, penalty, see section 28-316.

42-374 Annulment; conditions.

A marriage may be annulled for any of the following causes:

(1) The marriage between the parties is prohibited by law;

(2) Either party is impotent at the time of marriage;

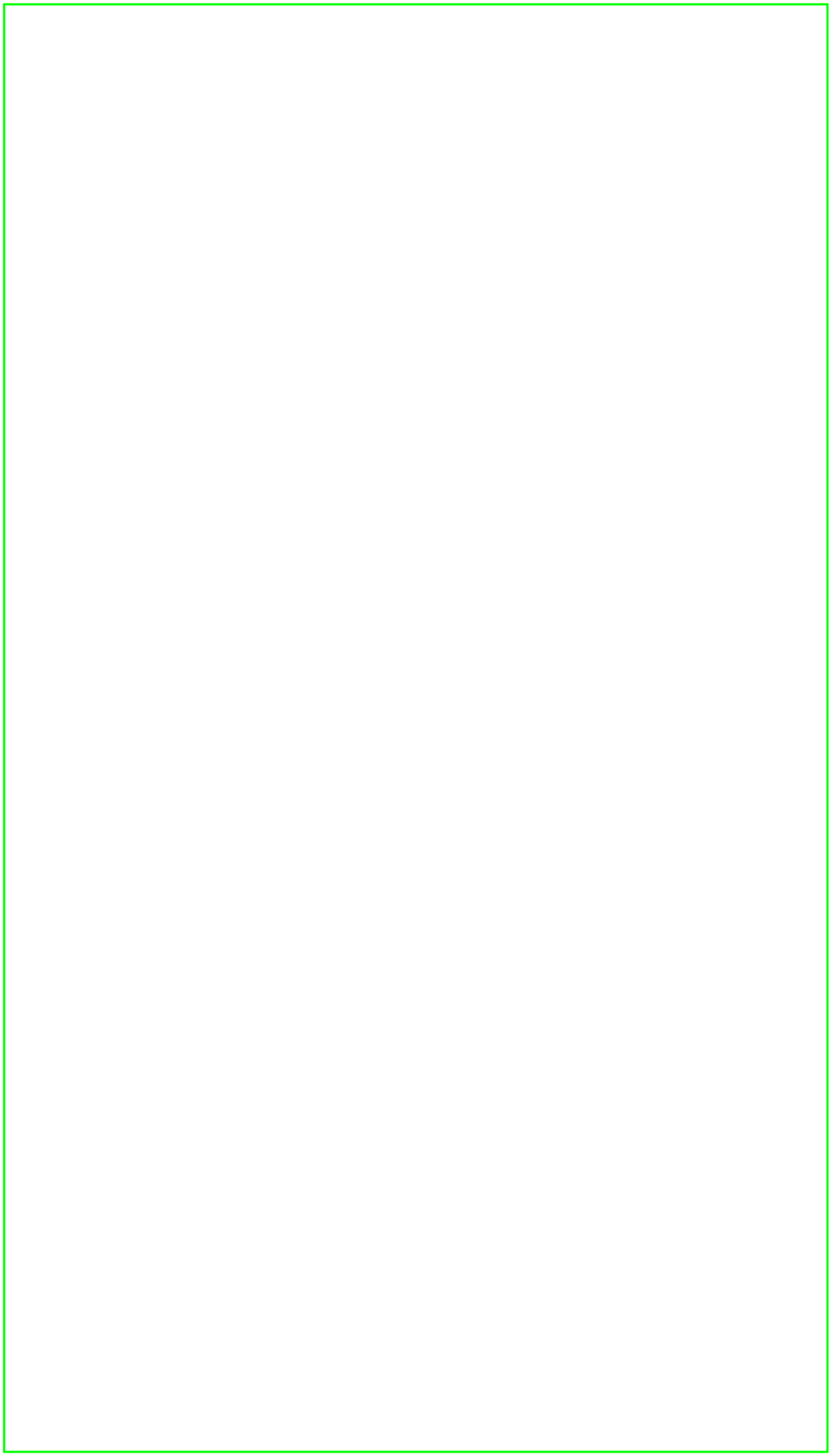
(3) Either party had a spouse living at the time of marriage; or

(4) Force or fraud.

Source: Laws 1972, LB 820, § 28; Laws 1989, LB 23, § 2; Laws 2013, LB23, § 9.
Effective date September 6, 2013.

Cross References

Marriages:
When void, see section 42-103.
When voidable, see section 42-118.



CHAPTER 43
INFANTS AND JUVENILES

ARTICLE 2
JUVENILE CODE

(b) GENERAL PROVISIONS

(c) LAW ENFORCEMENT PROCEDURES

(d) PREADJUDICATION PROCEDURES

(b) GENERAL PROVISIONS

43-245 Terms, defined.

For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Age of majority means nineteen years of age;

(2) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(3) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

(4) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(5) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(6) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(7) Custodian means a nonparental caretaker having physical custody of the juvenile and includes an appointee described in section 43-294;

(8) Guardian means a person, other than a parent, who has qualified by law as the guardian of a juvenile pursuant to testamentary or court appointment, but excludes a person who is merely a guardian ad litem;

(9) Juvenile means any person under the age of eighteen;

(10) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;

(11) Juvenile detention facility has the same meaning as in section 83-4,125;

(12) Legal custody has the same meaning as in section 43-2922;

(13) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;

(14) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(15) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;

(16) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;

(17) Parent means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition;

(18) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(19) Physical custody has the same meaning as in section 43-2922;

(20) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(21) Seal a record means that a record shall not be available to the public except upon the order of a court upon good cause shown;

(22) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(23) Staff secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to

physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Staff secure juvenile facility does not include any institution operated by the department;

(24) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02; and

(25) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction.

Source: Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91; Laws 2009, LB63, § 28; Laws 2010, LB800, § 12; Laws 2013, LB561, § 6.
Effective date May 30, 2013.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-247 Juvenile court; jurisdiction.

Except as provided in section 43-247.02, the juvenile court shall have exclusive original jurisdiction as to any juvenile defined in subdivision (1) of this section who is under the age of sixteen, as to any juvenile defined in subdivision (3) of this section, and as to the parties and proceedings provided in subdivisions (5), (6), and (7) of this section. As used in this section, all references to the juvenile's age shall be the age at the time the act which occasioned the juvenile court action occurred. The juvenile court shall have concurrent original jurisdiction with the district court as to any juvenile defined in subdivision (2) of this section. The juvenile court shall have concurrent original jurisdiction with the district court and county court as to any juvenile defined in subdivision (1) of this section who is age sixteen or seventeen, any juvenile defined in subdivision (4) of this section, and any proceeding under subdivision (6) or (10) of this section. The juvenile court shall have concurrent original jurisdiction with the county court as to any proceeding under subdivision (8) or (9) of this section. Notwithstanding any disposition entered by the juvenile court under the Nebraska Juvenile Code, the juvenile court's jurisdiction over any individual adjudged to be within the provisions of this section shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

The juvenile court in each county as herein provided shall have jurisdiction of:

(1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance;

(2) Any juvenile who has committed an act which would constitute a felony under the laws of this state;

(3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation, including prostitution, dangerous to life or limb or injurious to the health or morals of such juvenile, (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who deports himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school, or (c) who is mentally ill and dangerous as defined in section 71-908;

(4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245;

(5) The parent, guardian, or custodian of any juvenile described in this section;

(6) The proceedings for termination of parental rights;

(7) Any juvenile who has been voluntarily relinquished, pursuant to section 43-106.01, to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(8) Any juvenile who was a ward of the juvenile court at the inception of his or her guardianship and whose guardianship has been disrupted or terminated;

(9) The adoption or guardianship proceedings for a child over which the juvenile court already has jurisdiction under another provision of the Nebraska Juvenile Code; and

(10) The paternity or custody determination for a child over which the juvenile court already has jurisdiction.

Notwithstanding the provisions of the Nebraska Juvenile Code, the determination of jurisdiction over any Indian child as defined in section 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and the district court shall have exclusive jurisdiction in proceedings brought pursuant to section 71-510.

Source: Laws 1981, LB 346, § 3; Laws 1982, LB 215, § 2; Laws 1982, LB 787, § 2; Laws 1984, LB 13, § 77; Laws 1985, LB 255, § 32; Laws 1985, LB 447, § 13; Laws 1996, LB 1044, § 127; Laws 1997, LB 307, § 58; Laws 1997, LB 622, § 63; Laws 1998, LB 1041, § 22; Laws 2001, LB 23, § 1; Laws 2004, LB 1083, § 92; Laws 2006, LB 1115, § 31; Laws 2008, LB280, § 3; Laws 2008, LB1014, § 37; Laws 2013, LB255, § 9; Laws 2013, LB561, § 7.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB255, section 9, with LB561, section 7, to reflect all amendments.

Note: Changes made by LB561 became effective May 30, 2013. Changes made by LB255 became operative October 1, 2013.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.
Paternity determinations, jurisdiction, see section 25-2740.

43-247.02 Juvenile court; placement or commitment of juveniles; Department of Health and Human Services; Office of Juvenile Services; authority and duties.

(1) Notwithstanding any other provision of Nebraska law, on and after October 1, 2013, a juvenile court shall not:

(a) Place any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 with the Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) or (3) of this section;

(b) Commit any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 to the care and custody of the Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) or (3) of this section;

(c) Require the Department of Health and Human Services or the Office of Juvenile Services to supervise any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, other than as allowed under subsection (2) or (3) of this section; or

(d) Require the Department of Health and Human Services or the Office of Juvenile Services to provide, arrange for, or pay for any services for any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, or for any party to cases under those subdivisions, other than as allowed under subsection (2) or (3) of this section.

(2) Notwithstanding any other provision of Nebraska law, on and after July 1, 2013, a juvenile court shall not commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center except as part of an order of intensive supervised probation under subdivision (1)(b)(ii) of section 43-286.

(3) Nothing in this section shall be construed to limit the authority or duties of the Department of Health and Human Services in relation to juveniles adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247 who were committed to the care and custody of the Department of Health and Human Services prior to October 1, 2013, to the Office of Juvenile Services for community-based services prior to October 1, 2013, or to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. The care and custody of such juveniles with the Department of Health and Human Services or the Office of Juvenile Services shall continue in accordance with the Nebraska Juvenile Code and the Juvenile Services Act as such acts existed on January 1, 2013, until:

(a) The juvenile reaches the age of majority;

(b) The juvenile is no longer under the care and custody of the department pursuant to a court order or for any other reason, a guardian other than the department is appointed for the juvenile, or the juvenile is adopted;

(c) The juvenile is discharged pursuant to section 43-412, as such section existed on January 1, 2013; or

(d) A juvenile court terminates its jurisdiction of the juvenile.

Source: Laws 2013, LB561, § 8.
Effective date May 30, 2013.

Cross References

Juvenile Services Act, see section 43-2401.
Nebraska Juvenile Code, see section 43-2,129.

(c) LAW ENFORCEMENT PROCEDURES

43-248 Temporary custody of juvenile without warrant; when.

A peace officer may take a juvenile into temporary custody without a warrant or order of the court and proceed as provided in section 43-250 when:

(1) A juvenile has violated a state law or municipal ordinance and the officer has reasonable grounds to believe such juvenile committed such violation;

(2) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection;

(3) The officer believes the juvenile to be mentally ill and dangerous as defined in section 71-908 and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court;

(4) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian;

(5) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger;

(6) The officer has reasonable grounds to believe the juvenile is truant from school; or

(7) The officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under subsection (5) of section 28-801.

Source: Laws 1981, LB 346, § 4; Laws 1997, LB 622, § 64; Laws 2004, LB 1083, § 93; Laws 2010, LB800, § 14; Laws 2013, LB255, § 10.
Operative date October 1, 2013.

43-250 Temporary custody; disposition; custody requirements.

(1) A peace officer who takes a juvenile into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(a) The peace officer may release a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248;

(b) The peace officer may require a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248 to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in the written notice prepared in triplicate by the peace officer or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a

written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney or city attorney and, when required by the court, also file a copy of the notice with the court or the officer appointed by the court for such purpose; or

(c) The peace officer may retain temporary custody of a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(i) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(ii) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(iv) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(v) If, within the time limits specified in subdivision (1)(c)(i) or (1)(c)(ii) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(vi) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. Until January 1, 2013, a status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(vii) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance.

(2) When a juvenile is taken into temporary custody pursuant to subdivision (2) or (7) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

(3) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subsection (2) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

(4) When a juvenile is taken into temporary custody pursuant to subdivision (6) of section 43-248, the peace officer shall deliver the juvenile to the enrolled school of such juvenile.

(5) A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the

juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile had been taken into custody and was released.

(6) In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 6; Laws 1982, LB 787, § 4; Laws 1985, LB 447, § 14; Laws 1988, LB 790, § 24; Laws 1996, LB 1044, § 128; Laws 1997, LB 622, § 65; Laws 1998, LB 1073, § 13; Laws 2000, LB 1167, § 12; Laws 2001, LB 451, § 5; Laws 2003, LB 43, § 12; Laws 2004, LB 1083, § 94; Laws 2009, LB63, § 29; Laws 2010, LB771, § 18; Laws 2010, LB800, § 15; Laws 2013, LB255, § 11.
Operative date October 1, 2013.

43-251 Preadjudication placement or detention; mental health placement; prohibitions.

(1) When a juvenile is taken into custody pursuant to sections 43-248 and 43-250, the court or magistrate may take any action for preadjudication placement or detention prescribed in the Nebraska Juvenile Code.

(2) Any juvenile taken into custody under the Nebraska Juvenile Code for allegedly being mentally ill and dangerous shall not be placed in a staff secure juvenile facility, jail, or detention facility designed for juveniles who are accused of criminal acts or for juveniles as described in subdivision (1), (2), or (4) of section 43-247 either as a temporary placement by a peace officer, as a temporary placement by a court, or as an adjudication placement by the court.

Source: Laws 1981, LB 346, § 7; Laws 1985, LB 447, § 15; Laws 1997, LB 622, § 66; Laws 1998, LB 1073, § 14; Laws 2013, LB561, § 9.
Effective date May 30, 2013.

43-251.01 Juveniles; placements and commitments; restrictions.

All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

(1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;

(2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

(3) A juvenile who is found to be a juvenile as described in subdivision (1), (2), or (4) of section 43-247 shall not be assigned or transferred to an adult correctional facility or the secure youth confinement facility operated by the Department of Correctional Services;

(4) A juvenile under the age of fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center; and

(5) A juvenile shall not be detained in secure detention or placed at a youth rehabilitation and treatment center unless detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

Source: Laws 1998, LB 1073, § 25; Laws 2012, LB972, § 1; Laws 2013, LB561, § 10.
Effective date May 30, 2013.

(d) PREADJUDICATION PROCEDURES

43-254 Placement or detention pending adjudication; restrictions; assessment of costs.

Pending the adjudication of any case, and subject to subdivision (5) of section 43-251.01, if it appears that the need for placement or further detention exists, the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for secure detention, except that beginning October 1, 2013, no juvenile alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed in the care and custody or under the supervision of the Department of Health and Human Services, or (6) beginning October 1, 2013, offered supervision options as determined pursuant to section 43-260.01, through the Office of Probation Administration as ordered by the court and agreed to in writing by the parties, if the juvenile is alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and it does not appear that there is any need for secure detention. The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (2) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under subsections (1) through (4) of section 43-283.01.

Source: Laws 1981, LB 346, § 10; Laws 1985, LB 447, § 16; Laws 1987, LB 635, § 1; Laws 1987, LB 638, § 2; Laws 1996, LB 1044, § 129; Laws 1998, LB 1041, § 23; Laws 2000, LB 1167, § 16; Laws 2010, LB800, § 17; Laws 2013, LB561, § 11.
Effective date May 30, 2013.

43-258 Preadjudication physical and mental evaluation; placement; restrictions; reports; costs; responsibility.

(1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2)(a) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed with the Department of Health and Human Services for evaluation, except that on and after October 1, 2013, no juvenile alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed with the Department of Health and Human Services. If a juvenile is placed with the Department of Health and Human Services under this subdivision, the department shall make arrangements for an appropriate evaluation. The department shall determine whether the evaluation will be made on a residential or nonresidential basis. Placement with the department for the purposes of this section shall be for a period not to exceed thirty days. If necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days. Any temporary placement of a juvenile made under this section shall be in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

(b) Beginning October 1, 2013, pending the adjudication of any case in which a juvenile is alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order an evaluation. The Office of Probation Administration shall provide and pay for any evaluation ordered by the court under this subdivision if the office determines that there are no parental funds or private or public insurance available to pay for such evaluation. Any temporary placement of a juvenile made under this section shall be in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

(3) Upon completion of the evaluation, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such report shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246. The juvenile shall appear before the court for a hearing on the report of the evaluation results within ten days after the court receives the evaluation.

(4) During any period of detention or evaluation prior to adjudication:

(a) Except as provided in subdivision (4)(b) of this section, the county in which the case is pending is responsible for all detention costs incurred before and after an evaluation period prior to adjudication, the cost of delivering the juvenile to the location of the evaluation, and the cost of returning the juvenile to the court for further proceedings; and

(b) The Department of Health and Human Services is responsible for (i) the costs incurred during an evaluation when the juvenile has been placed with the

department unless otherwise ordered by the court pursuant to section 43-290 and (ii) the preevaluation detention costs for any days over the first ten days from the date the court places the juvenile with the department for evaluation, except that on and after October 1, 2013, the department shall not be responsible for any such costs in any case in which a juvenile is alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247.

(5) The Department of Health and Human Services is not responsible for preadjudication costs except as provided in subdivision (4)(b) of this section.

Source: Laws 1981, LB 346, § 14; Laws 1982, LB 787, § 9; Laws 1985, LB 447, § 17; Laws 1987, LB 638, § 3; Laws 1994, LB 988, § 20; Laws 1996, LB 1155, § 9; Laws 1998, LB 1073, § 19; Laws 2010, LB800, § 20; Laws 2011, LB669, § 26; Laws 2013, LB561, § 12.
Effective date May 30, 2013.

43-260.01 Detention; factors.

The need for preadjudication placement or supervision and the need for detention of a juvenile and whether secure or nonsecure detention is indicated shall be subject to subdivision (5) of section 43-251.01 and may be determined as follows:

(1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;

(2) If the results indicate that secure detention is not required, nonsecure detention placement or supervision options shall be pursued; and

(3) If the results indicate that secure detention is required, detention at the secure level as indicated by the instrument shall be pursued.

Source: Laws 2000, LB 1167, § 14; Laws 2013, LB561, § 13.
Effective date May 30, 2013.

43-260.04 Juvenile pretrial diversion program; requirements.

A juvenile pretrial diversion program shall:

(1) Be an option available for the county attorney or city attorney based upon his or her determination under this subdivision. The county attorney or city attorney may use the following information:

(a) The juvenile's age;

(b) The nature of the offense and role of the juvenile in the offense;

(c) The number and nature of previous offenses involving the juvenile;

(d) The dangerousness or threat posed by the juvenile to persons or property; or

(e) The recommendations of the referring agency, victim, and advocates for the juvenile;

(2) Permit participation by a juvenile only on a voluntary basis and shall include a juvenile diversion agreement described in section 43-260.06;

(3) Allow the juvenile to consult with counsel prior to a decision to participate in the program;

(4) Be offered to the juvenile when practicable prior to the filing of a juvenile petition or a criminal charge but after the arrest of the juvenile or issuance of a

citation to the juvenile if after the arrest or citation a decision has been made by the county attorney or city attorney that the offense will support the filing of a juvenile petition or criminal charges;

(5) Provide screening services for use in creating a diversion plan utilizing appropriate services for the juvenile;

(6) Result in dismissal of the juvenile petition or criminal charges if the juvenile successfully completes the program;

(7) Be designed and operated to further the goals stated in section 43-260.03 and comply with sections 43-260.04 to 43-260.07; and

(8) Require information received by the program regarding the juvenile to remain confidential unless a release of information is signed upon admission to the program or is otherwise authorized by law.

Source: Laws 2003, LB 43, § 3; Laws 2013, LB561, § 14.
Effective date May 30, 2013.

43-260.05 Juvenile pretrial diversion program; optional services.

A juvenile pretrial diversion program may:

(1) Provide screening services to the court and county attorney or city attorney to help identify likely candidates for the program;

(2) Establish goals for diverted juvenile offenders and monitor performance of the goals;

(3) Coordinate chemical dependency assessments of diverted juvenile offenders when indicated, make appropriate referrals for treatment, and monitor treatment and aftercare;

(4) Coordinate individual, group, and family counseling services;

(5) Oversee the payment of victim restitution by diverted juvenile offenders;

(6) Assist diverted juvenile offenders in identifying and contacting appropriate community resources;

(7) Coordinate educational services to diverted juvenile offenders to enable them to earn a high school diploma or general education development diploma; and

(8) Provide accurate information on how diverted juvenile offenders perform in the program to the juvenile courts, county attorneys, city attorneys, defense attorneys, and probation officers.

Source: Laws 2003, LB 43, § 4; Laws 2013, LB561, § 15.
Effective date May 30, 2013.

43-260.07 Juvenile pretrial diversion program; data; duties.

(1) On January 30 of each year, every county attorney or city attorney of a county or city which has a juvenile pretrial diversion program shall report to the Director of Juvenile Diversion Programs the information pertaining to the program required by rules and regulations adopted and promulgated by the Nebraska Commission on Law Enforcement and Criminal Justice.

(2) Juvenile pretrial diversion program data shall be maintained and compiled by the Director of Juvenile Diversion Programs.

Source: Laws 2003, LB 43, § 6; Laws 2013, LB561, § 16.
Effective date May 30, 2013.

43-272.01 Guardian ad litem; appointment; powers and duties; consultation; payment of costs.

(1) A guardian ad litem as provided for in subsections (2) and (3) of section 43-272 shall be appointed when a child is removed from his or her surroundings pursuant to subdivision (2) or (3) of section 43-248, subsection (2) of section 43-250, or section 43-251. If removal has not occurred, a guardian ad litem shall be appointed at the commencement of all cases brought under subdivision (3)(a) or (7) of section 43-247 and section 28-707.

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem:

(a) Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;

(b) Is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile;

(c) May at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be used for evaluating the status of the protected juvenile;

(d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile within two weeks after the appointment and once every six months thereafter and inquiry of the most current caseworker, foster parent, or other custodian and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;

(e) May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings. In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence;

(f) Shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing;

(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case; and

(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section 43-291.

(3) Nothing in this section shall operate to limit the discretion of the juvenile court in protecting the best interests of a juvenile who is the subject of a juvenile court petition.

(4) For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination.

Source: Laws 1982, LB 787, § 13; Laws 1985, LB 447, § 21; Laws 1990, LB 1222, § 2; Laws 1992, LB 1184, § 12; Laws 1995, LB 305, § 1; Laws 1997, LB 622, § 68; Laws 2008, LB1014, § 39; Laws 2010, LB800, § 21; Laws 2013, LB561, § 17.
Effective date May 30, 2013.

(f) ADJUDICATION PROCEDURES

43-278 Adjudication hearing; held within ninety days after petition is filed; additional reviews; telephonic or videoconference hearing; authorized.

Except as provided in sections 43-254.01 and 43-277.01, all cases filed under subdivision (3) of section 43-247 shall have an adjudication hearing not more than ninety days after a petition is filed. Upon a showing of good cause, the court may continue the case beyond the ninety-day period. The court shall also review every case filed under such subdivision which has been adjudicated or transferred to it for disposition not less than once every six months. All communications, notices, orders, authorizations, and requests authorized or required in the Nebraska Juvenile Code; all nonevidentiary hearings; and any evidentiary hearings approved by the court and by stipulation of all parties may be heard by the court telephonically or by videoconferencing in a manner that ensures the preservation of an accurate record. All of the orders generated by way of a telephonic or videoconference hearing shall be recorded as if the judge were conducting a hearing on the record.

Source: Laws 1981, LB 346, § 34; Laws 1992, LB 1184, § 13; Laws 1997, LB 622, § 71; Laws 2010, LB800, § 22; Laws 2013, LB103, § 2.
Effective date September 6, 2013.

43-279.01 Juvenile in need of assistance or termination of parental rights; rights of parties; appointment of counsel; court; powers; proceedings.

(1) When the petition alleges the juvenile to be within the provisions of subdivision (3)(a) of section 43-247 or when termination of parental rights is sought pursuant to subdivision (6) of section 43-247 and the parent, custodian, or guardian appears with or without counsel, the court shall inform the parties of the:

(a) Nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284, 43-285, and 43-288 to 43-295;

(b) Right of the parent to engage counsel of his or her choice at his or her own expense or to have counsel appointed if the parent is unable to afford to hire a lawyer;

(c) Right of a stepparent, custodian, or guardian to engage counsel of his or her choice and, if there are allegations against the stepparent, custodian, or guardian or when the petition is amended to include such allegations, to have counsel appointed if the stepparent, custodian, or guardian is unable to afford to hire a lawyer;

(d) Right to remain silent as to any matter of inquiry if the testimony sought to be elicited might tend to prove the party guilty of any crime;

(e) Right to confront and cross-examine witnesses;

(f) Right to testify and to compel other witnesses to attend and testify;

(g) Right to a speedy adjudication hearing; and

(h) Right to appeal and have a transcript or record of the proceedings for such purpose.

(2) The court shall have the discretion as to whether or not to appoint counsel for a person who is not a party to the proceeding. If counsel is appointed, failure of the party to maintain contact with his or her court-appointed counsel or to keep such counsel advised of the party's current address may result in the counsel being discharged by the court.

(3) After giving the parties the information prescribed in subsection (1) of this section, the court may accept an in-court admission, an answer of no contest, or a denial from any parent, custodian, or guardian as to all or any part of the allegations in the petition. The court shall ascertain a factual basis for an admission or an answer of no contest.

(4) In the case of a denial, the court shall allow a reasonable time for preparation if needed and then proceed to determine the question of whether the juvenile falls under the provisions of section 43-247 as alleged. After hearing the evidence, the court shall make a finding and adjudication to be entered on the records of the court as to whether the allegations in the petition have been proven by a preponderance of the evidence in cases under subdivision (3)(a) of section 43-247 or by clear and convincing evidence in proceedings to terminate parental rights. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

(5) If the court shall find that the allegations of the petition or motion have not been proven by the requisite standard of proof, it shall dismiss the case or motion. If the court sustains the petition or motion, it shall allow a reasonable time for preparation if needed and then proceed to inquire into the matter of the proper disposition to be made of the juvenile.

Source: Laws 1985, LB 447, § 23; Laws 1989, LB 22, § 3; Laws 2013, LB561, § 18.
Effective date May 30, 2013.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-281 Adjudication of jurisdiction; temporary placement for evaluation; payment of costs; restrictions on placement.

(1) Following an adjudication of jurisdiction and prior to final disposition, the court may place the juvenile with the Office of Juvenile Services or the Department of Health and Human Services for evaluation, except that on and after October 1, 2013, no juvenile adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed with the office or the department. The office or department shall arrange and pay for an appropriate evaluation if the office or department determines that there are no parental funds or private or public insurance available to pay for such evaluation, except that on and after October 1, 2013, the office and the department shall not be responsible for such evaluations of any juvenile adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247.

(2) On and after October 1, 2013, following an adjudication of jurisdiction under subdivision (1), (2), (3)(b), or (4) of section 43-247 and prior to final disposition, the court may order an evaluation. The Office of Probation Administration shall arrange and pay for the evaluation ordered by the court if the office determines that there are no parental funds or private or public insurance available to pay for such evaluation. Any evaluation ordered under this subsection shall be completed and the juvenile shall be returned to the court within twenty-one days after the evaluation is ordered. The physician, psychologist, licensed mental health practitioner, licensed drug and alcohol counselor, or other provider responsible for completing the evaluation shall have up to ten days to complete the evaluation after receiving the referral authorizing the evaluation.

(3) A juvenile pending evaluation ordered under subsection (1) or (2) of this section shall not reside in a detention facility at the time of the evaluation or while waiting for the completed evaluation to be returned to the court unless detention of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

Source: Laws 1981, LB 346, § 37; Laws 1982, LB 787, § 16; Laws 1994, LB 436, § 1; Laws 1998, LB 1073, § 24; Laws 2013, LB561, § 19.
Effective date May 30, 2013.

(g) DISPOSITION

43-284 Juvenile in need of assistance or special supervision; care and custody; payments for support; removal from home; restrictions.

When any juvenile is adjudged to be under subdivision (3), (4), or (8) of section 43-247, the court may permit such juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to (1) the care of some suitable institution, (2) inpatient or outpatient treatment at a mental health facility or mental health program, (3) the care of some reputable citizen of good moral character, (4) the care of some association willing to receive the juvenile embracing in its objects the purpose of caring for or obtaining homes for such juveniles, which association shall have been accredited as provided in section 43-296, (5) the care of a suitable family, or (6) the care and custody of the Department of Health and Human Services, except that a juvenile who is adjudicated to be a juvenile described in subdivision (3)(b) or (4) of section 43-247 shall not be committed to the care and custody or supervision of the department on or after October 1, 2013.

Under subdivision (1), (2), (3), (4), or (5) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, education, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, education, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until suitable provisions may be made for the juvenile without such payment.

The amount to be paid by a county for education pursuant to this section shall not exceed the average cost for education of a public school student in the county in which the juvenile is placed and shall be paid only for education in kindergarten through grade twelve.

The court may enter a dispositional order removing a juvenile from his or her home upon a written determination that continuation in the home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts to preserve and reunify the family have been made if required under section 43-283.01.

Source: Laws 1981, LB 346, § 40; Laws 1982, LB 353, § 1; Laws 1987, LB 635, § 3; Laws 1987, LB 638, § 5; Laws 1989, LB 182, § 10; Laws 1996, LB 1044, § 130; Laws 1997, LB 622, § 72; Laws 1998, LB 1041, § 25; Laws 2001, LB 23, § 2; Laws 2013, LB561, § 20.
Effective date May 30, 2013.

Cross References

Child removed from home, investigation and examination required, see section 43-1311.

43-284.01 Juvenile voluntarily relinquished; custody; alternative disposition; effect.

Any juvenile adjudged to be under subdivision (7) of section 43-247 shall remain in the custody of the Department of Health and Human Services or the licensed child placement agency to whom the juvenile has been relinquished unless the court finds by clear and convincing evidence that the best interests of the juvenile require that an alternative disposition be made. If the court makes such finding, then alternative disposition may be made as provided under section 43-284. Such alternative disposition shall relieve the department or licensed child placement agency of all responsibility with regard to such juvenile.

Source: Laws 1985, LB 447, § 9; Laws 1989, LB 182, § 11; Laws 1996, LB 1044, § 131; Laws 2013, LB561, § 21.
Effective date May 30, 2013.

43-285 Care of juvenile; duties; authority of guardian; placement plan and report; when; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to

determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Any such association and the department shall be responsible for applying for any health insurance available to the juvenile, including, but not limited to, medical assistance under the Medical Assistance Act. Such guardianship shall not include the guardianship of any estate of the juvenile.

(2)(a) This subdivision applies until October 1, 2013. Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The plan shall include a statement regarding the eligibility of the juvenile for any health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The health and safety of the juvenile shall be the paramount concern in the proposed plan. When the plan includes the provision of services in order that the juvenile can remain in his or her home and such services are to prevent out-of-home placement, the plan shall be prepared and shall clearly state that the services described in the plan are to prevent placement and that, absent preventive services, foster care is the planned arrangement for the child. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible juveniles, the Young Adult Voluntary Services and Support Act. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(b) This subdivision applies beginning October 1, 2013. Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3)(a) or (c) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible juveniles, the Young Adult Voluntary Services and Support Act. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of

the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. Every six months, the report shall provide an updated statement regarding the eligibility of the juvenile for health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the Foster Care Review Office or the designated local foster care review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) The executive director and any agent or employee of the Foster Care Review Office or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Source: Laws 1981, LB 346, § 41; Laws 1982, LB 787, § 17; Laws 1984, LB 845, § 31; Laws 1985, LB 447, § 25; Laws 1989, LB 182, § 12; Laws 1990, LB 1222, § 3; Laws 1992, LB 1184, § 14; Laws 1993, LB 103, § 1; Laws 1996, LB 1044, § 133; Laws

1998, LB 1041, § 26; Laws 2010, LB800, § 23; Laws 2011, LB177, § 1; Laws 2011, LB648, § 1; Laws 2012, LB998, § 2; Laws 2013, LB216, § 15; Laws 2013, LB269, § 1; Laws 2013, LB561, § 22.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB216, section 15, with LB269, section 1, and LB561, section 22, to reflect all amendments.

Note: Changes made by LB561 became effective May 30, 2013. Changes made by LB216 and LB269 became effective June 5, 2013.

Cross References

Foster Care Review Act, see section 43-1318.
Medical Assistance Act, see section 68-901.
Young Adult Voluntary Services and Support Act, see section 43-4501.

43-286 Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure.

(1) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), or (4) of section 43-247:

(a)(i) This subdivision applies until October 1, 2013. The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(A) Place the juvenile on probation subject to the supervision of a probation officer;

(B) Permit the juvenile to remain in his or her own home or be placed in a suitable family home, subject to the supervision of the probation officer; or

(C) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer. If the court has committed the juvenile to the care and custody of the Department of Health and Human Services, the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Under subdivision (1)(a)(i) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment.

(ii) This subdivision applies beginning October 1, 2013. The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(A) Place the juvenile on probation subject to the supervision of a probation officer; or

(B) Permit the juvenile to remain in his or her own home or be placed in a suitable family home or institution, subject to the supervision of the probation officer.

If the court has placed a juvenile under the supervision of a probation officer, the Office of Probation Administration shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Under subdivision (1)(a)(ii) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment;

(b)(i) This subdivision applies to all juveniles committed to the Office of Juvenile Services prior to July 1, 2013. The court may commit such juvenile to the Office of Juvenile Services, but a juvenile under the age of fourteen years shall not be placed at the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the juvenile and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter.

(ii) This subdivision applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013. Unless prohibited by section 43-251.01, the court may commit such juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center as a condition of an order of intensive supervised probation if all levels of probation supervision and options for community-based services have been exhausted and placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court. Intensive supervised probation for purposes of this subdivision means that the Office of Juvenile Services shall be responsible for the care and custody of the juvenile until the Office of Juvenile Services discharges the juvenile. Upon discharge of the juvenile, the court shall hold a review hearing on the conditions of probation and enter any order allowed under subdivision (1)(a) of this section. The Office of Juvenile Services shall work in collaboration with the Office of Probation Administration in developing individualized reentry plans as created in section 43-425 and shall notify the committing court at least sixty days prior to discharge. The Office of Juvenile Services shall pay the cost of the care and custody of the juvenile from the time of commitment until discharge from the Office of Juvenile Services; or

(c) Beginning July 1, 2013, and until October 1, 2013, the court may commit such juvenile to the Office of Juvenile Services for community supervision.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or until October 1, 2013, enter an order committing or placing the juvenile to the care and custody of the Department of Health and Human Services.

(3) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 because of a nonviolent act or acts and the juvenile has not previously been adjudicated to be such a juvenile because of a violent act or acts, the court may, with the agreement of the victim, order the juvenile to attend juvenile offender and victim mediation with a mediator or

at an approved center selected from the roster made available pursuant to section 25-2908.

(4) When a juvenile is placed on probation and a probation officer has reasonable cause to believe that such juvenile has committed or is about to commit a substance abuse violation, a noncriminal violation, or a violation of a condition of his or her probation, the probation officer shall take appropriate measures as provided in section 43-286.01.

(5)(a) When a juvenile is placed on probation or under the supervision of the court and it is alleged that the juvenile is again a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this section for such adjudications.

(b) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term of probation or supervision or that the juvenile has violated an order of the court, a motion to revoke probation or supervision or to change the disposition may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the juvenile shall be entitled to those rights relating to counsel provided by section 43-272 and those rights relating to detention provided by sections 43-254 to 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or supervision or an order of the court or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation of probation or supervision or a change of disposition. The hearing shall be held within a reasonable time after the juvenile is taken into custody;

(iii) The hearing shall be conducted in an informal manner and shall be flexible enough to consider evidence, including letters, affidavits, and other material, that would not be admissible in an adversarial criminal trial;

(iv) The juvenile shall be given a preliminary hearing in all cases when the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation, supervision, or court order. Such preliminary hearing shall be held before an impartial person other than his or her probation officer or any person directly involved with the case. If, as a result of such preliminary hearing, probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with this subsection;

(v) If the juvenile is found by the court to have violated the terms of his or her probation or supervision or an order of the court, the court may modify the terms and conditions of the probation, supervision, or other court order, extend the period of probation, supervision, or other court order, or enter any order of

disposition that could have been made at the time the original order was entered; and

(vi) In cases when the court revokes probation, supervision, or other court order, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

Source: Laws 1981, LB 346, § 42; Laws 1982, LB 787, § 18; Laws 1987, LB 638, § 6; Laws 1989, LB 182, § 13; Laws 1994, LB 988, § 21; Laws 1996, LB 1044, § 134; Laws 1998, LB 1073, § 26; Laws 2000, LB 1167, § 21; Laws 2011, LB463, § 4; Laws 2012, LB972, § 3; Laws 2013, LB561, § 23.
Effective date May 30, 2013.

Cross References

Juvenile probation officers, appointment, see section 29-2253.
Placements and commitments, restrictions, see section 43-251.01.

43-289 Juvenile committed; release from confinement upon reaching age of majority; hospital treatment; custody in state institutions; discharge.

In no case shall a juvenile committed under the terms of the Nebraska Juvenile Code be confined after he or she reaches the age of majority. The court may, when the health or condition of any juvenile adjudged to be within the terms of such code shall require it, cause the juvenile to be placed in a public hospital or institution for treatment or special care or in an accredited and suitable private hospital or institution which will receive the juvenile for like purposes. Whenever any juvenile has been committed to the Department of Health and Human Services, the department shall follow the court's orders, if any, concerning the juvenile's specific needs for treatment or special care for his or her physical well-being and healthy personality. If the court finds any such juvenile to be a person with an intellectual disability, the court may, upon attaching a physician's certificate and a report as to the mental capacity of such person, commit such juvenile directly to an authorized and appropriate state or local facility or home.

The marriage of any juvenile committed to a state institution under the age of nineteen years shall not make such juvenile of the age of majority.

A juvenile committed to any such institution shall be subject to the control of the superintendent thereof, and the superintendent, with the advice and consent of the Department of Health and Human Services, shall adopt and promulgate rules and regulations for the promotion, paroling, and final discharge of residents such as shall be considered mutually beneficial for the institution and the residents. Upon final discharge of any resident, such department shall file a certified copy of the discharge with the court which committed the resident.

Source: Laws 1981, LB 346, § 45; Laws 1985, LB 447, § 26; Laws 1986, LB 1177, § 18; Laws 1989, LB 182, § 15; Laws 1996, LB 1044, § 141; Laws 2013, LB23, § 10.
Effective date September 6, 2013.

43-296 Associations receiving juveniles; supervision by Department of Health and Human Services; certificate; reports; statements.

All associations receiving juveniles under the Nebraska Juvenile Code shall be subject to the same visitation, inspection, and supervision by the Department of Health and Human Services as are public charitable institutions of this state,

and it shall be the duty of the department to pass annually upon the fitness of every such association as may receive or desire to receive juveniles under the provisions of such code. Every such association shall annually, on or before September 15, make a report to the department showing its condition, management, and competency to adequately care for such juveniles as are or may be committed to it and such other facts as the department may require. Upon receiving such report, the department shall provide an electronic copy of such report to the Health and Human Services Committee of the Legislature on or before September 15 of 2012, 2013, and 2014. Upon the department being satisfied that such association is competent and has adequate facilities to care for such juveniles, it shall issue to such association a certificate to that effect, which certificate shall continue in force for one year unless sooner revoked by the department. No juvenile shall be committed to any such association which has not received such a certificate within the fifteen months immediately preceding the commitment. The court may at any time require from any association receiving or desiring to receive juveniles under the provisions of the Nebraska Juvenile Code such reports, information, and statements as the judge shall deem proper and necessary for his or her action, and the court shall in no case be required to commit a juvenile to any association whose standing, conduct, or care of juveniles or ability to care for the same is not satisfactory to the court.

Source: Laws 1981, LB 346, § 52; Laws 1985, LB 447, § 28; Laws 1996, LB 1044, § 146; Laws 2012, LB1160, § 11; Laws 2013, LB222, § 6.
Effective date May 8, 2013.

Cross References

Department of Health and Human Services, supervisory powers, see section 43-707.

(i) MISCELLANEOUS PROVISIONS

43-2,108.05 Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.

(1) If the court orders the record of a juvenile sealed pursuant to section 43-2,108.04, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the offense, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, be deemed never to have occurred;

(b) Send notice of the order to seal the record (i) to the Nebraska Commission on Law Enforcement and Criminal Justice, (ii) if the record includes impoundment or prohibition to obtain a license or permit pursuant to section 43-287, to the Department of Motor Vehicles, (iii) if the juvenile whose record has been ordered sealed was a ward of the state at the time the proceeding was initiated or if the Department of Health and Human Services was a party in the proceeding, to such department, and (iv) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all notified under subdivision (1)(b) of this section to seal all records pertaining to the offense;

(d) If the case was transferred from district court to juvenile court or was transferred under section 43-282, send notice of the order to seal the record to the transferring court; and

(e) Explain to the juvenile what sealing the record means verbally if the juvenile is present in the court at the time the court issues the sealing order or by written notice sent by regular mail to the juvenile's last-known address if the juvenile is not present in the court at the time the court issues the sealing order.

(2) The effect of having a record sealed under section 43-2,108.04 is that thereafter no person is allowed to release any information concerning such record, except as provided by this section. After a record is sealed, the person whose record was sealed can respond to any public inquiry as if the offense resulting in such record never occurred. A government agency and any other public office or agency shall reply to any public inquiry that no information exists regarding a sealed record. Except as provided in subsection (3) of this section, an order to seal the record applies to every government agency and any other public office or agency that has a record relating to the offense, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Upon the written request of a person whose record has been sealed and the presentation of a copy of such order, a government agency or any other public office or agency shall seal all records pertaining to the offense.

(3) A sealed record is accessible to law enforcement officers, county attorneys, and city attorneys in the investigation, prosecution, and sentencing of crimes, to the sentencing judge in the sentencing of criminal defendants, and to any attorney representing the subject of the sealed record. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made by the following persons or for the following purposes:

(a) By the court or by any person allowed to inspect such records by an order of the court for good cause shown;

(b) By the court, city attorney, or county attorney for purposes of collection of any remaining parental support or obligation balances under section 43-290;

(c) By the Nebraska Probation System for purposes of juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation and by the Department of Correctional Services, the Office of Juvenile Services, a juvenile assessment center, a criminal detention facility, a juvenile detention facility, or a staff secure juvenile facility, for an individual committed to it, placed with it, or under its care;

(d) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the preparation of evaluations, compliance with federal reporting requirements, or the supervision and protection of persons placed with the department or for licensing or certification purposes under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act;

(e) Upon application, by the person who is the subject of the sealed record and by persons authorized by the person who is the subject of the sealed record who are named in that application;

(f) At the request of a party in a civil action that is based on a case that has a sealed record, as needed for the civil action. The party also may copy the sealed

record as needed for the civil action. The sealed record shall be used solely in the civil action and is otherwise confidential and subject to this section;

(g) By persons engaged in bona fide research, with the permission of the court, only if the research results in no disclosure of the person's identity and protects the confidentiality of the sealed record; or

(h) By a law enforcement agency if a person whose record has been sealed applies for employment with the law enforcement agency.

(4) Nothing in this section prohibits the Department of Health and Human Services from releasing information from sealed records in the performance of its duties with respect to the supervision and protection of persons served by the department.

(5) In any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred. Applications for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record. Employers shall not ask if an applicant has had a record sealed. The Department of Labor shall develop a link on the department's web site to inform employers that employers cannot ask if an applicant had a record sealed and that an application for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record.

(6) Any person who violates this section may be held in contempt of court.

Source: Laws 2010, LB800, § 30; Laws 2011, LB463, § 10; Laws 2013, LB265, § 31; Laws 2013, LB561, § 24.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB265, section 31, with LB561, section 24, to reflect all amendments.

Note: Changes made by LB265 became effective May 26, 2013. Changes made by LB561 became effective May 30, 2013.

Cross References

Child Care Licensing Act, see section 71-1908.
Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,129 Code, how cited.

Sections 43-245 to 43-2,129 shall be known and may be cited as the Nebraska Juvenile Code.

Source: Laws 1981, LB 346, § 85; Laws 1985, LB 447, § 35; Laws 1989, LB 182, § 19; Laws 1994, LB 1106, § 8; Laws 1997, LB 622, § 74; Laws 1998, LB 1041, § 31; Laws 1998, LB 1073, § 27; Laws 2000, LB 1167, § 23; Laws 2003, LB 43, § 16; Laws 2006, LB 1115, § 32; Laws 2008, LB1014, § 42; Laws 2010, LB800, § 31; Laws 2011, LB463, § 11; Laws 2013, LB561, § 25.
Effective date May 30, 2013.

ARTICLE 4

OFFICE OF JUVENILE SERVICES

Section
43-404. Office of Juvenile Services; created; powers and duties.

Section

43-404 Office of Juvenile Services; created; powers and duties.

(1) This subsection applies until July 1, 2014. There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of state juvenile correctional facilities and programs other than the secure youth confinement facility which is under the control of the Department of Correctional Services. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be responsible for the administration of the facilities and programs of the office. The department may contract with a state agency or private provider to operate any facilities and programs of the Office of Juvenile Services.

(2) This subsection applies beginning July 1, 2014. There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of the youth rehabilitation and treatment centers. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be responsible for the administration of the facilities and programs of the office. The department may contract with a state agency or private provider to operate any facilities and programs of the Office of Juvenile Services.

Source: Laws 1994, LB 988, § 10; Laws 1996, LB 1044, § 960; R.S.Supp.,1996, § 83-925.02; Laws 1998, LB 1073, § 36; Laws 2007, LB296, § 109; Laws 2013, LB561, § 26.
Effective date May 30, 2013.

43-405 Office of Juvenile Services; administrative duties.

The administrative duties of the Office of Juvenile Services are to:

(1) Manage, establish policies for, and administer the office, including all facilities and programs operated by the office or provided through the office by contract with a provider;

(2) Supervise employees of the office, including employees of the facilities and programs operated by the office;

(3) Have separate budgeting procedures and develop and report budget information separately from the Department of Health and Human Services;

(4) Adopt and promulgate rules and regulations for the levels of treatment and for management, control, screening, treatment, rehabilitation, transfer, discharge, evaluation until October 1, 2013, and parole until July 1, 2014, of juveniles placed with or committed to the Office of Juvenile Services;

(5) Ensure that statistical information concerning juveniles placed with or committed to facilities or programs of the office is collected, developed, and maintained for purposes of research and the development of treatment programs;

(6) Monitor commitments, placements, and evaluations at facilities and programs operated by the office or through contracts with providers and submit electronically an annual report of its findings to the Legislature. For 2012, 2013, and 2014, the office shall also provide an electronic copy of the report to the Health and Human Services Committee of the Legislature on or before September 15. The report shall include an assessment of the administrative costs of operating the facilities, the cost of programming, the savings realized through reductions in commitments, placements, and evaluations, and information regarding the collaboration required by section 83-101;

(7) Coordinate the programs and services of the juvenile justice system with other governmental agencies and political subdivisions;

(8) Coordinate educational, vocational, and social counseling;

(9) Until July 1, 2014, coordinate community-based services for juveniles and their families;

(10) Until July 1, 2014, supervise and coordinate juvenile parole and aftercare services; and

(11) Exercise all powers and perform all duties necessary to carry out its responsibilities under the Health and Human Services, Office of Juvenile Services Act.

Source: Laws 1998, LB 1073, § 37; Laws 2012, LB782, § 44; Laws 2012, LB972, § 5; Laws 2012, LB1160, § 12; Laws 2013, LB222, § 7; Laws 2013, LB561, § 27.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB222, section 7, with LB561, section 27, to reflect all amendments.

Note: Changes made by LB222 became effective May 8, 2013. Changes made by LB561 became effective May 30, 2013.

43-406 Office of Juvenile Services; treatment programs, services, and systems; requirements.

The Office of Juvenile Services shall utilize:

(1) Risk and needs assessment instruments for use in determining the level of treatment for the juvenile;

(2) A case classification process to include levels of treatment defined by rules and regulations and case management standards for each level of treatment.

The process shall provide for a balance of accountability, public safety, and treatment;

(3) Case management for all juveniles committed to the office;

(4) Until July 1, 2014, a purchase-of-care system which will facilitate the development of a statewide community-based array of care with the involvement of the private sector and the local public sector. Care services may be purchased from private providers to provide a wider diversity of services. This system shall include accessing existing Title IV-E funds of the federal Social Security Act, as amended, medicaid funds, and other funding sources to support eligible community-based services. Such services developed and purchased shall include, but not be limited to, evaluation services. Services shall be offered and delivered on a regional basis;

(5) Until October 1, 2013, community-based evaluation programs, supplemented by one or more residential evaluation programs. A residential evaluation program shall be provided in a county containing a city of the metropolitan class. Community-based evaluation services shall replace the residential evaluation services available at the Youth Diagnostic and Rehabilitation Center by December 31, 1999; and

(6) A management information system. The system shall be a unified, interdepartmental client information system which supports the management function as well as the service function.

Source: Laws 1994, LB 988, § 15; Laws 1995, LB 371, § 27; Laws 1996, LB 1141, § 1; Laws 1997, LB 307, § 229; Laws 1997, LB 882, § 12; R.S.Supp.,1997, § 83-925.07; Laws 1998, LB 1073, § 38; Laws 2013, LB561, § 28.
Effective date May 30, 2013.

43-407 Office of Juvenile Services; programs and treatment services; treatment plan; case management and coordination process; funding utilization; intent.

(1) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. The Office of Juvenile Services shall design and make available programs and treatment services through the Youth Rehabilitation and Treatment Center-Kearney and Youth Rehabilitation and Treatment Center-Geneva. The programs and treatment services shall be based upon the individual or family evaluation process and treatment plan. The treatment plan shall be developed within fourteen days after admission. If a juvenile placed at the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the juvenile may be transferred to a program or facility if the treatment and security needs of the juvenile can be met. The assessment process shall include involvement of both private and public sector behavioral health providers. The selection of the treatment venue for each juvenile shall include individualized case planning and incorporate the goals of the juvenile justice system pursuant to section 43-402. Juveniles committed to the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva who are transferred to alternative settings for treatment remain committed to the Depart-

ment of Health and Human Services and the Office of Juvenile Services until discharged from such custody. Programs and treatment services shall address:

(a) Behavioral impairments, severe emotional disturbances, sex offender behaviors, and other mental health or psychiatric disorders;

(b) Drug and alcohol addiction;

(c) Health and medical needs;

(d) Education, special education, and related services;

(e) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (a) through (d) of this subsection. Services shall also be made available for juveniles who have been physically or sexually abused;

(f) A case management and coordination process, designed to assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and evaluation. Structured programming shall be scheduled for all juveniles. This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles if such programming is determined to be age and developmentally appropriate. The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; and

(g) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on May 25, 2007, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

(2) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013. The Office of Juvenile Services shall design and make available programs and treatment services through the Youth Rehabilitation and Treatment Center-Kearney and Youth Rehabilitation and Treatment Center-Geneva. The programs and treatment services shall be based upon the individual or family evaluation process and treatment plan. The treatment plan shall be developed within fourteen days after admission. If a juvenile placed at the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the Office of Juvenile Services may arrange for such treatment to be provided at the Hastings Regional Center or may transition the juvenile to another inpatient or subacute residential treatment facility in the State of Nebraska. Except in a case requiring emergency admission to an inpatient facility, the juvenile shall not be discharged by the Office of Juvenile Services until the juvenile has been returned to the court for a review of his or her conditions of probation and the juvenile has been transitioned to the clinically appropriate level of care. Programs and treatment services shall address:

(a) Behavioral impairments, severe emotional disturbances, sex offender behaviors, and other mental health or psychiatric disorders;

(b) Drug and alcohol addiction;

(c) Health and medical needs;

(d) Education, special education, and related services;

(e) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (a) through (d) of this subsection. Services shall also be made available for juveniles who have been physically or sexually abused;

(f) A case management and coordination process, designed to assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and evaluation. Structured programming shall be scheduled for all juveniles. This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles if such programming is determined to be age and developmentally appropriate. The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; and

(g) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2013, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

Source: Laws 1994, LB 988, § 14; Laws 1997, LB 882, § 11; R.S.Supp.,1997, § 83-925.06; Laws 1998, LB 1073, § 39; Laws 2007, LB542, § 4; Laws 2013, LB561, § 29.
Effective date May 30, 2013.

Cross References

Special Education Act, see section 79-1110.

43-408 Office of Juvenile Services; committing court; determination of placement and treatment services; review status; when.

(1)(a) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013, and to all juveniles committed to the Office of Juvenile Services for community supervision prior to October 1, 2013. Whenever any juvenile is committed to the Office of Juvenile Services, to any facility operated by the Office of Juvenile Services, or to the custody of the Administrator of the Office of Juvenile Services, a superintendent of a facility, or an administrator of a program, the juvenile is deemed committed to the Office of Juvenile Services. Juveniles committed to the Office of Juvenile Services shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(b) The committing court shall order the initial level of treatment for a juvenile committed to the Office of Juvenile Services. Prior to determining the

initial level of treatment for a juvenile, the court may solicit a recommendation regarding the initial level of treatment from the Office of Juvenile Services. Under this subsection, the committing court shall not order a specific placement for a juvenile. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services until such time that the juvenile is discharged from the Office of Juvenile Services. The court shall conduct review hearings every six months, or at the request of the juvenile, for any juvenile committed to the Office of Juvenile Services who is placed outside his or her home, except for a juvenile residing at a youth rehabilitation and treatment center. The court shall determine whether an out-of-home placement made by the Office of Juvenile Services is in the best interests of the juvenile, with due consideration being given by the court to public safety. If the court determines that the out-of-home placement is not in the best interests of the juvenile, the court may order other treatment services for the juvenile.

(c) After the initial level of treatment is ordered by the committing court, the Office of Juvenile Services shall provide treatment services which conform to the court's level of treatment determination. Within thirty days after making an actual placement, the Office of Juvenile Services shall provide the committing court with written notification of where the juvenile has been placed. At least once every six months thereafter, until the juvenile is discharged from the care and custody of the Office of Juvenile Services, the office shall provide the committing court with written notification of the juvenile's actual placement and the level of treatment that the juvenile is receiving.

(d) For transfer hearings, the burden of proof to justify the transfer is on the Office of Juvenile Services, the standard of proof is clear and convincing evidence, and the strict rules of evidence do not apply. Transfers of juveniles from one place of treatment to another are subject to section 43-251.01 and to the following:

(i) Except as provided in subdivision (d)(ii) of this subsection, if the Office of Juvenile Services proposes to transfer the juvenile from a less restrictive to a more restrictive place of treatment, a plan outlining the proposed change and the reasons for the proposed change shall be presented to the court which committed the juvenile. Such change shall occur only after a hearing and a finding by the committing court that the change is in the best interests of the juvenile, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel;

(ii) The Office of Juvenile Services may make an immediate temporary change without prior approval by the committing court only if the juvenile is in a harmful or dangerous situation, is suffering a medical emergency, is exhibiting behavior which warrants temporary removal, or has been placed in a non-state-owned facility and such facility has requested that the juvenile be removed. Approval of the committing court shall be sought within fifteen days of making an immediate temporary change, at which time a hearing shall occur before the court. The court shall determine whether it is in the best interests of the juvenile to remain in the new place of treatment, with due consideration being given by the court to public safety. At the hearing, the juvenile has the right to be represented by counsel; and

(iii) If the proposed change seeks to transfer the juvenile from a more restrictive to a less restrictive place of treatment or to transfer the juvenile from the juvenile's current place of treatment to another which has the same level of

restriction as the current place of treatment, the Office of Juvenile Services shall notify the juvenile, the juvenile's parents, custodian, or legal guardian, the committing court, the county attorney, the counsel for the juvenile, and the guardian ad litem of the proposed change. The juvenile has fifteen days after the date of the notice to request an administrative hearing with the Office of Juvenile Services, at which time the Office of Juvenile Services shall determine whether it is in the best interests of the juvenile for the proposed change to occur, with due consideration being given by the office to public safety. The juvenile may be represented by counsel at the juvenile's own expense. If the juvenile is aggrieved by the administrative decision of the Office of Juvenile Services, the juvenile may appeal that decision to the committing court within fifteen days after the Office of Juvenile Services' decision. At the hearing before the committing court, the juvenile has the right to be represented by counsel.

(e) If a juvenile is placed in detention after the initial level of treatment is determined by the committing court, the committing court shall hold a hearing every fourteen days to review the status of the juvenile. Placement of a juvenile in detention shall not be considered as a treatment service.

(f) The committing court's review of a change of place of treatment pursuant to this subsection does not apply to parole revocation hearings.

(2)(a) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013. Whenever any juvenile is committed to the Office of Juvenile Services, the juvenile shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(b) The committing court shall order placement at a youth rehabilitation and treatment center for a juvenile committed to the Office of Juvenile Services. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services for the purpose of reviewing the juvenile's probation upon discharge from the care and custody of the Office of Juvenile Services.

(c) If a juvenile is placed in detention while awaiting placement at a youth rehabilitation and treatment center and the placement has not occurred within fourteen days, the committing court shall hold a hearing every fourteen days to review the status of the juvenile. Placement of a juvenile in detention shall not be considered a treatment service.

Source: Laws 1996, LB 1044, § 962; R.S.Supp.,1996, § 83-925.12; Laws 1998, LB 1073, § 40; Laws 2001, LB 598, § 1; Laws 2006, LB 1113, § 40; Laws 2013, LB561, § 30.
Effective date May 30, 2013.

43-410 Juvenile absconding; authority to apprehend.

(1) This subsection applies until July 1, 2014. Any peace officer, juvenile parole officer, or direct care staff member of the Office of Juvenile Services has the authority to apprehend and detain a juvenile who has absconded or is attempting to abscond from a placement for evaluation or commitment to the Office of Juvenile Services and shall cause the juvenile to be returned to the facility or program or an appropriate juvenile detention facility or staff secure juvenile facility. For purposes of this subsection, direct care staff member means any staff member charged with the day-to-day care and supervision of juveniles housed at a facility or program operated directly by the office or

security staff who has received training in apprehension techniques and procedures.

(2)(a) This subsection applies beginning July 1, 2014. Any peace officer or direct care staff member of the Office of Juvenile Services has the authority to apprehend and detain a juvenile who has absconded or is attempting to abscond from commitment to the Office of Juvenile Services and shall cause the juvenile to be returned to the youth rehabilitation and treatment center or an appropriate juvenile detention facility or staff secure juvenile facility.

(b) For purposes of this subsection, direct care staff member means any staff member charged with the day-to-day care and supervision of juveniles at a youth rehabilitation and treatment center or security staff who has received training in apprehension techniques and procedures.

Source: Laws 1998, LB 1073, § 42; Laws 2013, LB561, § 31.
Effective date May 30, 2013.

43-412 Commitment to Office of Juvenile Services; discharge of juvenile; effect of discharge; notice of discharge.

(1) Every juvenile committed to the Office of Juvenile Services pursuant to the Nebraska Juvenile Code or pursuant to subsection (3) of section 29-2204 shall remain committed until he or she attains the age of nineteen or is legally discharged.

(2) Upon attainment of the age of nineteen or absent a continuing order of intensive supervised probation, discharge of any juvenile pursuant to the rules and regulations shall be a complete release from all penalties incurred by conviction or adjudication of the offense for which he or she was committed.

(3) The Office of Juvenile Services shall provide the committing court, Office of Probation Administration, county attorney, defense attorney, if any, and guardian ad litem, if any, with written notification of the juvenile's discharge within thirty days prior to a juvenile being discharged from the care and custody of the office.

Source: Laws 1901, c. 51, § 11, p. 407; Laws 1903, c. 69, § 2, p. 369; R.S.1913, § 7379; C.S.1922, § 7038; C.S.1929, § 83-1109; R.S.1943, § 83-472; Laws 1969, c. 817, § 80, p. 3111; Laws 1974, LB 992, § 1; Laws 1993, LB 31, § 44; Laws 1994, LB 988, § 35; Laws 1996, LB 1044, § 956; R.S.Supp.,1996, § 83-472; Laws 1998, LB 1073, § 44; Laws 2011, LB463, § 12; Laws 2013, LB561, § 32.
Effective date May 30, 2013.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

43-413 Evaluations authorized; costs.

(1) This section applies to all juveniles placed with the Office of Juvenile Services for evaluation prior to October 1, 2013. A court may, pursuant to section 43-281, place a juvenile with the Office of Juvenile Services or the Department of Health and Human Services for an evaluation to aid the court in the disposition.

(2) A juvenile convicted as an adult shall be placed with the Office of Juvenile Services for evaluation prior to sentencing as provided by subsection (3) of section 29-2204.

(3) All juveniles shall be evaluated prior to commitment to the Office of Juvenile Services unless the court finds that (a) there has been a substantially equivalent evaluation within the last twelve months that makes reevaluation unnecessary or (b) an addendum to a previous evaluation rather than a reevaluation would be appropriate. The court shall not commit such juvenile to the temporary custody of the Office of Juvenile Services prior to disposition. The office may place a juvenile in residential or nonresidential community-based evaluation services for purposes of evaluation to assist the court in determining the initial level of treatment for the juvenile.

(4) During any period of detention or evaluation prior to disposition:

(a) Except as provided in subdivision (4)(b) of this section, the county in which the case is pending is responsible for all detention costs incurred before and after an evaluation period prior to disposition, the cost of delivering the juvenile to the facility or institution for an evaluation, and the cost of returning the juvenile to the court for disposition; and

(b) The state is responsible for (i) the costs incurred during an evaluation unless otherwise ordered by the court pursuant to section 43-290 and (ii) the preevaluation detention costs for any days over the first ten days from the date the evaluation is ordered by the court.

(5) The Office of Juvenile Services and the Department of Health and Human Services are not responsible for predisposition costs except as provided in subdivision (4)(b) of this section.

Source: Laws 1969, c. 814, § 2, p. 3060; Laws 1973, LB 563, § 50; Laws 1993, LB 31, § 49; Laws 1994, LB 988, § 38; R.S.1943, (1994), § 83-4,101; Laws 1998, LB 1073, § 45; Laws 2001, LB 640, § 1; Laws 2013, LB561, § 33.
Effective date May 30, 2013.

43-414 Office of Juvenile Services; evaluation powers.

This section applies to all juveniles placed with the Office of Juvenile Services for evaluation prior to October 1, 2013. Each juvenile placed for evaluation with the Office of Juvenile Services shall be subjected to medical examination and evaluation as directed by the office.

Source: Laws 1969, c. 814, § 3, p. 3060; Laws 1973, LB 563, § 51; R.S.1943, (1994), § 83-4,102; Laws 1998, LB 1073, § 46; Laws 2013, LB561, § 34.
Effective date May 30, 2013.

43-415 Evaluation; time limitation; extension; hearing.

This section applies to all juveniles placed with the Office of Juvenile Services for evaluation prior to October 1, 2013. A juvenile placed for evaluation with the Office of Juvenile Services shall be returned to the court upon the completion of the evaluation or at the end of thirty days, whichever comes first. When the office finds that an extension of the thirty-day period is necessary to complete the evaluation, the court may order an extension not to exceed an

additional thirty days. The court shall hold a hearing within ten days after the evaluation is completed and returned to the court by the office.

Source: Laws 1969, c. 814, § 5, p. 3060; Laws 1973, LB 563, § 52; Laws 1993, LB 31, § 50; Laws 1994, LB 988, § 39; R.S.1943, (1994), § 83-4,104; Laws 1998, LB 1073, § 47; Laws 2010, LB800, § 32; Laws 2013, LB561, § 35.
Effective date May 30, 2013.

43-416 Office of Juvenile Services; parole powers; notice to committing court.

This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. This section shall not apply after June 30, 2014. The Office of Juvenile Services shall have administrative authority over the parole function for juveniles committed to a youth rehabilitation and treatment center and may (1) determine the time of release on parole of committed juveniles eligible for such release, (2) fix the conditions of parole, revoke parole, issue or authorize the issuance of detainers for the apprehension and detention of parole violators, and impose other sanctions short of revocation for violation of conditions of parole, and (3) determine the time of discharge from parole. The office shall provide the committing court with written notification of the juvenile's discharge from parole within thirty days of a juvenile being discharged from the supervision of the office.

Source: Laws 1998, LB 1073, § 48; Laws 2011, LB463, § 13; Laws 2013, LB561, § 36.
Effective date May 30, 2013.

43-417 Juvenile parole; considerations; discharge from youth rehabilitation and treatment center; considerations.

(1) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. In administering juvenile parole, the Office of Juvenile Services shall consider whether (a) the juvenile has completed the goals of his or her individual treatment plan or received maximum benefit from institutional treatment, (b) the juvenile would benefit from continued services under community supervision, (c) the juvenile can function in a community setting, (d) there is reason to believe that the juvenile will not commit further violations of law, and (e) there is reason to believe that the juvenile will comply with the conditions of parole.

(2) This subsection applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013. In determining whether to discharge a juvenile from a youth rehabilitation and treatment center, the Office of Juvenile Services shall consider whether (a) the juvenile has completed the goals of his or her individual treatment plan or received maximum benefit from institutional treatment, (b) the juvenile would benefit from continued services under community supervision, (c) the juvenile can function in a community setting, (d) there is reason to believe that the juvenile will not commit further violations of law, and (e) there

is reason to believe that the juvenile will comply with the conditions of probation.

Source: Laws 1998, LB 1073, § 49; Laws 2013, LB561, § 37.
Effective date May 30, 2013.

43-418 Parole violations; apprehension and detention; when.

(1) This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. Any juvenile parole officer or peace officer may apprehend and detain a juvenile who is on parole if the officer has reasonable cause to believe that a juvenile has violated or is about to violate a condition of his or her parole and that the juvenile will attempt to leave the jurisdiction or will place lives or property in danger unless the juvenile is detained. A juvenile parole officer may call upon a peace officer to assist him or her in apprehending and detaining a juvenile pursuant to this section. Such juvenile may be held in an appropriate juvenile facility pending hearing on the allegations.

(2) Juvenile parole officers may search for and seize contraband and evidence related to possible parole violations by a juvenile.

(3) Whether or not a juvenile is apprehended and detained by a juvenile parole officer or peace officer, if there is reason to believe that a juvenile has violated a condition of his or her parole, the Office of Juvenile Services may issue the juvenile written notice of the alleged parole violations and notice of a hearing on the alleged parole violations.

Source: Laws 1998, LB 1073, § 50; Laws 2013, LB561, § 38.
Effective date May 30, 2013.

43-419 Parole violation; preliminary hearing.

(1) This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. When a juvenile is apprehended and detained for an alleged violation of juvenile parole, he or she shall have a preliminary hearing as soon as practicable and no later than within seventy-two hours of being apprehended and detained. An impartial hearing officer shall conduct the preliminary hearing. The impartial hearing officer shall not be the juvenile parole officer alleging the violation of parole or a witness to the alleged violation. The impartial hearing officer may be an employee of the Office of Juvenile Services, including a supervisor or a juvenile parole officer, other than the parole officer filing the allegations.

(2) The juvenile parolee shall receive notice of the preliminary hearing, its purpose, and the alleged violations prior to the commencement of the hearing. The juvenile parolee may present relevant information, question adverse witnesses, and make a statement regarding the alleged parole violations. The rules of evidence shall not apply at such hearings and the hearing officer may rely upon any available information.

(3) The hearing officer shall determine whether there is probable cause to believe that the juvenile has violated a term or condition of his or her parole and shall issue that decision in writing. The decision shall either indicate there is not probable cause to believe that the juvenile parolee has violated the terms of his or her parole and dismiss the allegations and return the juvenile to parole

supervision, or it shall indicate there is probable cause to believe that the juvenile has violated a condition of parole and state where the juvenile will be held pending the revocation hearing. The preliminary hearing officer shall consider the seriousness of the alleged violation, the public safety, and the best interests of the juvenile in determining where the juvenile shall be held pending the revocation hearing.

Source: Laws 1998, LB 1073, § 51; Laws 2013, LB561, § 39.
Effective date May 30, 2013.

43-420 Hearing officer; requirements.

(1) This subsection applies until July 1, 2013. Any hearing required or permitted for juveniles in the custody of the Office of Juvenile Services, except a preliminary parole revocation hearing, shall be conducted by a hearing officer who is an attorney licensed to practice law in the State of Nebraska and may be an employee of the Department of Health and Human Services or an attorney who is an independent contractor. If the hearing officer is an employee of the department, he or she shall not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office.

(2) This subsection applies beginning July 1, 2013. Any hearing required or permitted for juveniles in the custody of the Office of Juvenile Services shall be conducted by a hearing officer who is an attorney licensed to practice law in the State of Nebraska and may be an employee of the Department of Health and Human Services or an attorney who is an independent contractor. If the hearing officer is an employee of the department, he or she shall not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office.

Source: Laws 1998, LB 1073, § 52; Laws 2013, LB561, § 40.
Effective date May 30, 2013.

43-421 Parole violations; rights of juvenile.

This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. When a juvenile is charged with being in violation of a condition of his or her parole, the juvenile is entitled to:

(1) Notice of the alleged violations of parole at least twenty-four hours prior to a hearing on the allegations. Such notice shall contain a concise statement of the purpose of the hearing and the factual allegations upon which evidence will be offered;

(2) A prompt hearing, within fourteen days after the preliminary hearing, if the juvenile is being held pending the hearing;

(3) Reasonable continuances granted by the hearing officer for the juvenile to prepare for the hearing;

(4) Have his or her parents notified of the hearing and allegations and have his or her parents attend the hearing;

(5) Be represented by legal counsel at the expense of the Department of Health and Human Services unless retained legal counsel is available to the juvenile. The department may contract with attorneys to provide such representation to juveniles charged with parole violations;

(6) Compel witnesses to attend, testify on his or her own behalf, present evidence, and cross-examine witnesses against him or her; and

(7) Present a statement on his or her own behalf.

Source: Laws 1998, LB 1073, § 53; Laws 2013, LB561, § 41.
Effective date May 30, 2013.

43-422 Parole violation; waiver and admission.

This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. After receiving notice of the allegations of a violation of parole, being notified of the possible consequences, being informed of his or her rights pertaining to the hearing, and having an opportunity to confer with his or her parents or precommitment custodian and legal counsel, if desired, the juvenile may waive his or her right to a hearing and admit to the allegations. Such waiver and admission shall be in writing and submitted, together with a recommended disposition by the hearing officer, to the Administrator of the Office of Juvenile Services or his or her designee.

Source: Laws 1998, LB 1073, § 54; Laws 2013, LB561, § 42.
Effective date May 30, 2013.

43-423 Parole violation hearing; requirements; appeal.

This section applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. At the parole violation hearing, the hearing officer shall again advise the juvenile of his or her rights and ensure that the juvenile has received the notice of allegations and the possible consequences. Strict rules of evidence shall not be applied. The hearing officer shall determine whether the detention of the juvenile or other restrictions are necessary for the safety of the juvenile or for the public safety and shall indicate to what extent the juvenile will continue to be detained or restricted pending a final decision and administrative appeal. The hearing officer shall issue a written recommended disposition to the Administrator of the Office of Juvenile Services or his or her designee who shall promptly affirm, modify, or reverse the recommended disposition. The final decision of the administrator or his or her designee may be appealed pursuant to the Administrative Procedure Act. The Department of Health and Human Services shall be deemed to have acted within its jurisdiction if its action is in the best interests of the juvenile with due consideration being given to public safety. The appeal shall in all other respects be governed by the Administrative Procedure Act.

Source: Laws 1998, LB 1073, § 55; Laws 2013, LB561, § 43.
Effective date May 30, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

43-425 Community and Family Reentry Process; created; applicability; juvenile committed to youth rehabilitation and treatment center; family team meetings; individualized reentry plan; risk-screening and needs assessment; probation officer; duties; Office of Probation Administration; duties.

(1) The Community and Family Reentry Process is hereby created. This process is created in order to reduce recidivism and promote safe and effective reentry for the juvenile and his or her family to the community from the juvenile justice system. This process applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013.

(2) While a juvenile is committed to a youth rehabilitation and treatment center, family team meetings shall be conducted in person or via videoconferencing at least once per month with the juvenile's support system to discuss the juvenile's transition back to the community. A juvenile's support system should be made up of any of the following: The juvenile himself or herself, any immediate family members or guardians, informal and formal supports, the juvenile's probation officer, Office of Juvenile Services personnel employed by the facility, and any additional personnel as appropriate. Once developed, individualized reentry plans should be discussed at the family team meetings with the juvenile and other members of the juvenile's support system and shall include discussions on the juvenile's placement after leaving the facility. The probation officer and the Office of Juvenile Services personnel should discuss progress and needs of the juvenile and should help the juvenile follow his or her individual reentry plan to help with his or her transition back to the community.

(3) Within sixty days prior to discharge from a youth rehabilitation and treatment center, or as soon as possible if the juvenile's remaining time at the youth rehabilitation and treatment center is less than sixty days, an evidence-based risk screening and needs assessment should be conducted on the juvenile in order to determine the juvenile's risk of reoffending and the juvenile's individual needs upon reentering the community.

(4) Individualized reentry plans shall be developed with input from the juvenile and his or her support system in conjunction with a risk assessment process. Individualized reentry plans shall be finalized thirty days prior to the juvenile leaving the youth rehabilitation and treatment center or as soon as possible if the juvenile's remaining time at the center is less than thirty days. Individualized reentry plans should include specifics about the juvenile's placement upon return to the community, an education transition plan, a treatment plan with any necessary appointments being set prior to the juvenile leaving the center, and any other formal and informal supports for the juvenile and his or her family. The district probation officer and Office of Juvenile Services personnel shall review the individualized reentry plan and the expected outcomes as a result of the plan with the juvenile and his or her support system within thirty days prior to the juvenile's discharge from the center.

(5) The probation officer shall have contact with the juvenile and the juvenile's support system within forty-eight hours after the juvenile returns to the community and continue to assist the juvenile and the juvenile's support system in implementing and following the individualized reentry plan and monitoring the juvenile's risk through ongoing assessment updates.

(6) The Office of Probation Administration shall establish an evidence-based reentry process that utilizes risk assessment to determine the juvenile's supervision level upon return to the community. They shall establish supervision strategies based on risk levels of the juvenile and supervise accordingly, with ongoing reassessment to assist in determining eligibility for release from

probation. The Office of Probation Administration shall develop a formal matrix of graduated sanctions to be utilized prior to requesting the county attorney to file for probation revocation. The Office of Probation Administration shall provide training to its workers on risk-based supervision strategies, motivational interviewing, family engagement, community-based resources, and other evidence-based reentry strategies.

Source: Laws 2013, LB561, § 54.
Effective date May 30, 2013.

ARTICLE 5

ASSISTANCE FOR CERTAIN CHILDREN

Section

43-517 Department of Health and Human Services; report; public record.

(1) The Department of Health and Human Services shall provide a report to the Governor and the Legislature no later than December 1 each year regarding the data and information collected pursuant to section 43-516, including a summary of such data and information. The report submitted to the Legislature shall be submitted electronically.

(2) The data and information collected under such section shall be considered a public record under section 84-712.01.

Source: Laws 2012, LB842, § 3; Laws 2013, LB222, § 8.
Effective date May 8, 2013.

43-534 Family policy; annual statement required.

Every department, agency, institution, committee, and commission of state government which is concerned or responsible for children and families shall submit, as part of the annual budget request of such department, agency, institution, committee, or commission, a comprehensive statement of the efforts such department, agency, institution, committee, or commission has taken to carry out the policy and principles set forth in sections 43-532 and 43-533. For 2012, 2013, and 2014, the Department of Health and Human Services shall provide an electronic copy of its statement submitted under this section to the Health and Human Services Committee of the Legislature on or before September 15. The statement shall include, but not be limited to, a listing of programs provided for children and families and the priority of such programs, a summary of the expenses incurred in the provision and administration of services for children and families, the number of clients served by each program, and data being collected to demonstrate the short-term and long-term effectiveness of each program.

Source: Laws 1987, LB 637, § 3; Laws 2012, LB1160, § 13; Laws 2013, LB222, § 9.
Effective date May 8, 2013.

43-536 Child care reimbursement; market rate survey; adjustment of rate; participation in quality rating and improvement system; effect.

In determining the rate of reimbursement for child care, the Department of Health and Human Services shall conduct a market rate survey of the child care providers in the state. The department shall adjust the reimbursement rate for child care every odd-numbered year at a rate not less than the sixtieth percentile and not to exceed the seventy-fifth percentile of the current market rate survey, except that (1) nationally accredited child care providers may be reimbursed at higher rates and (2) an applicable child care or early childhood education program, as defined in section 71-1954, that is participating in the quality rating and improvement system and has received a rating of step three or higher under the Step Up to Quality Child Care Act may be reimbursed at higher rates based upon the program's quality scale rating under the quality rating and improvement system.

Source: Laws 1995, LB 455, § 20; Laws 1996, LB 1044, § 174; Laws 1997, LB 307, § 69; Laws 1998, LB 1073, § 28; Laws 2003, LB 414, § 1; Laws 2007, LB296, § 123; Laws 2011, LB464, § 1; Laws 2013, LB507, § 14.
Operative date September 6, 2013.

Cross References

Step Up to Quality Child Care Act, see section 71-1952.

ARTICLE 9
CHILDREN COMMITTED TO THE DEPARTMENT

Section
43-905. Guardianship; care; placement; duties of department; contracts; payment for maintenance.

43-905 Guardianship; care; placement; duties of department; contracts; payment for maintenance.

(1) The Department of Health and Human Services shall be the legal guardian of all children committed to it. The department shall afford temporary care and shall use special diligence to provide suitable homes for such children. The department shall make reasonable efforts to accomplish joint-sibling placement or sibling visitation or ongoing interaction between siblings as provided in section 43-1311.02. The department is authorized to place such children in suitable families for adoption, foster care, or guardianship or, in the discretion of the department, on a written contract.

(2) The contract shall provide (a) for the children's education in the public schools or otherwise, (b) for teaching them some useful occupation, and (c) for kind and proper treatment as members of the family in which they are placed.

(3) Whenever any child who has been committed to the department becomes self-supporting, the department shall declare that fact and the guardianship of the department shall cease. Thereafter the child shall be entitled to his or her own earnings. Guardianship of and services by the department shall never extend beyond the age of majority, except that (a) services by the department to a child shall continue until the child reaches the age of twenty-one if the child is a student regularly attending a school, college, or university or regularly attending a course of vocational or technical training designed to prepare such child for gainful employment or the child receives extended services and support as provided in the Young Adult Voluntary Services and Support Act

and (b) beginning January 1, 2014, coverage for health care and related services under medical assistance in accordance with section 68-911 may be extended as provided under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013, for medicaid coverage for individuals under twenty-six years of age as allowed pursuant to such act.

(4) Whenever the parents of any ward, whose parental rights have not been terminated, have become able to support and educate their child, the department shall restore the child to his or her parents if the home of such parents would be a suitable home. The guardianship of the department shall then cease.

(5) Whenever permanent free homes for the children cannot be obtained, the department shall have the authority to provide and pay for the maintenance of the children in private families, in foster care, in guardianship, in boarding homes, or in institutions for care of children.

Source: Laws 1911, c. 62, § 5, p. 274; R.S.1913, § 7229; C.S.1922, § 6886; C.S.1929, § 83-504; Laws 1937, c. 202, § 1, p. 826; C.S.Supp.,1941, § 83-504; R.S.1943, § 83-243; Laws 1945, c. 246, § 1, p. 779; Laws 1951, c. 325, § 1, p. 1097; Laws 1953, c. 344, § 1, p. 1118; Laws 1957, c. 387, § 1, p. 1345; Laws 1959, c. 443, § 1, p. 1491; Laws 1961, c. 415, § 32, p. 1261; Laws 1965, c. 245, § 1, p. 695; Laws 1967, c. 248, § 4, p. 657; Laws 1969, c. 349, § 1, p. 1219; Laws 1977, LB 312, § 5; Laws 1978, LB 732, § 1; Laws 1992, LB 169, § 1; Laws 1996, LB 1044, § 185; Laws 1996, LB 1155, § 10; Laws 1998, LB 1073, § 29; Laws 2007, LB296, § 124; Laws 2011, LB177, § 2; Laws 2013, LB216, § 16; Laws 2013, LB269, § 2.
Effective date June 5, 2013.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB216, section 16, with LB269, section 2, to reflect all amendments.

Cross References

Foster Parent Liability and Property Damage Fund, see section 43-1320.
Young Adult Voluntary Services and Support Act, see section 43-4501.

ARTICLE 13
FOSTER CARE

(a) FOSTER CARE REVIEW ACT

Section

(a) FOSTER CARE REVIEW ACT

43-1301 Terms, defined.

For purposes of the Foster Care Review Act, unless the context otherwise requires:

(1) Local board means a local foster care review board created pursuant to section 43-1304;

(2) Office means the Foster Care Review Office created pursuant to section 43-1302;

(3) Foster care facility means any foster family home as defined in section 71-1901, residential child-caring agency as defined in section 71-1926, public agency, private agency, or any other person or entity receiving and caring for foster children;

(4) Foster care placements means all placements of juveniles described in section 43-247, placements of neglected, dependent, or delinquent children, including those made directly by parents or by third parties, and placements of children who have been voluntarily relinquished pursuant to section 43-106.01 to the Department of Health and Human Services or any child-placing agency as defined in section 71-1926 licensed by the Department of Health and Human Services;

(5) Person or court in charge of the child means (a) the Department of Health and Human Services, an association, or an individual who has been made the guardian of a neglected, dependent, or delinquent child by the court and has the responsibility of the care of the child and has the authority by and with the assent of the court to place such a child in a suitable family home or institution or has been entrusted with the care of the child by a voluntary placement made by a parent or legal guardian, (b) the court which has jurisdiction over the child, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;

(6) Voluntary placement means the placement by a parent or legal guardian who relinquishes the possession and care of a child to a third party, individual, or agency;

(7) Family unit means the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care, except that for purposes of potential sibling placement, the child's family unit also includes the child's siblings even if the child has not resided with such siblings prior to placement in foster care;

(8) Residential child-caring agency has the definition found in section 71-1926;

(9) Child-placing agency has the definition found in section 71-1926; and

(10) Siblings means biological siblings and legal siblings, including, but not limited to, half-siblings and stepsiblings.

Source: Laws 1982, LB 714, § 1; Laws 1985, LB 255, § 40; Laws 1985, LB 447, § 36; Laws 1987, LB 239, § 1; Laws 1990, LB 1222, § 4; Laws 1996, LB 1044, § 194; Laws 1997, LB 307, § 75; Laws 2011, LB177, § 3; Laws 2012, LB998, § 3; Laws 2013, LB265, § 32.
Effective date May 26, 2013.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-1302 Foster Care Review Office; established; purpose; Foster Care Advisory Committee; created; members; terms; meetings; duties; expenses; executive director; duties.

(1)(a) The Foster Care Review Office is hereby established. The purpose of the office is to provide information and direct reporting to the courts, the Department of Health and Human Services, and the Legislature regarding the foster care system in Nebraska; to provide oversight of the foster care system; and to make recommendations regarding foster care policy to the Legislature. The executive director of the office shall provide information and reporting services, provide analysis of information obtained, and oversee foster care file audit case reviews and tracking of cases of children in the foster care system. The executive director of the office shall, through information analysis and with the assistance of the Foster Care Advisory Committee, (i) determine key issues of the foster care system and ways to resolve the issues and to otherwise improve the system and (ii) make policy recommendations.

(b) All equipment and effects of the State Foster Care Review Board on July 1, 2012, shall be transferred to the Foster Care Review Office, and all staff of the board, except the executive director and interim executive director, shall be transferred to the office. The State Foster Care Review Board shall terminate on July 1, 2012. Beginning on July 1, 2012, the data coordinator of the board, as such position existed prior to such date, shall serve as the executive director of the office until the Foster Care Advisory Committee hires an executive director as prescribed by this section. It is the intent of the Legislature that the staff of the board employed prior to July 1, 2012, shall continue to be employed by the office until such time as the executive director is hired by the committee.

(c) It is the intent of the Legislature that the funds appropriated to the State Foster Care Review Board be transferred to the Foster Care Review Office for FY2012-13.

(2)(a) The Foster Care Advisory Committee is created. The committee shall have five members appointed by the Governor. The members shall have no pecuniary interest in the foster care system and shall not be employed by the office, the Department of Health and Human Services, a county, a residential child-caring agency, a child-placing agency, or a court.

(b) The Governor shall appoint three members from a list of twelve local board members submitted by the Health and Human Services Committee of the Legislature, one member from a list of four persons with data analysis experience submitted by the Health and Human Services Committee of the Legislature, and one member from a list of four persons who are residents of the state and are representative of the public at large submitted by the Health and Human Services Committee of the Legislature. The Health and Human Services Committee of the Legislature shall hold a confirmation hearing for the appointees, and the appointments shall be subject to confirmation by the Legislature, except that the initial members and members appointed while the Legislature is not in session shall serve until the next session of the Legislature, at which time a majority of the members of the Legislature shall approve or disapprove of the appointments.

(c) The terms of the members shall be for three years, except that the Governor shall designate two of the initial appointees to serve initial terms ending on March 1, 2014, and three of the initial appointees to serve initial terms ending on March 1, 2015. The Governor shall make the initial appoint-

ments within thirty days after July 1, 2012. Members shall not serve more than two consecutive terms, except that members shall serve until their successors have been appointed and qualified. The Governor shall appoint members to fill vacancies in the same manner as the original appointments to serve for the remainder of the unexpired term.

(d) The Foster Care Advisory Committee shall meet at least four times each calendar year. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the committee. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(e) The duties of the Foster Care Advisory Committee are to:

(i) Hire and fire an executive director for the office who has training and experience in foster care; and

(ii) Support and facilitate the work of the office, including the tracking of children in foster care and reviewing foster care file audit case reviews.

(3) The executive director of the office shall hire, fire, and supervise office staff and shall be responsible for the duties of the office as provided by law, including the annual report and other reporting, review, tracking, data collection and analysis, and oversight and training of local boards.

Source: Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133; Laws 2009, LB679, § 1; Laws 2012, LB998, § 4; Laws 2013, LB265, § 33.
Effective date May 26, 2013.

43-1303 Office; registry; reports required; foster care file audit case reviews; rules and regulations; local board; report; court; report; visitation of facilities; executive director; duties.

(1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a monthly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such monthly report shall consist of identifying information, placement information, and the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312. The department and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, social security number, date of birth, gender, race, and religion;

(b) Identification information for parents and stepparents, including name, social security number, address, and status of parental rights;

(c) Placement information, including initial placement date, current placement date, and the name and address of the foster care provider;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child;

(f) Case worker; and

(g) Permanency plan objective.

(2)(a) The office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care. Such reports shall include (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vi) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4) The office shall report and make recommendations to the Legislature, department, local boards, and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data. The report and recommendations submitted to the Legislature shall be submitted electronically. In addition, the office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met. The executive director shall also provide, at a time specified by the Health and Human Services Committee of the Legislature, regular electronic updates regarding child welfare data and information at least quarterly, and a fourth-quarter report which shall be the annual report. The executive director shall include issues, policy concerns, and problems which have come to the office and the executive director from analysis of the data. The executive director shall recommend alternatives to the identified problems and related needs of the office and the foster care system to the committee. The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature. The annual report

of the office shall be completed by December 1 each year, beginning December 1, 2012, and shall be submitted electronically to the committee.

Source: Laws 1982, LB 714, § 3; Laws 1990, LB 1222, § 6; Laws 1996, LB 1044, § 195; Laws 1998, LB 1041, § 36; Laws 1999, LB 240, § 1; Laws 2012, LB998, § 5; Laws 2013, LB222, § 10.
Effective date May 8, 2013.

43-1304 Local foster care review boards; members; powers and duties.

There shall be local foster care review boards to conduct the foster care file audit case reviews of children in foster care placement and carry out other powers and duties given to such boards under the Foster Care Review Act. Members of local boards serving on July 1, 2012, shall continue to serve the unexpired portion of their terms. The executive director of the office shall select members to serve on local boards from a list of applications submitted to the office. Each local board shall consist of not less than four and not more than ten members as determined by the executive director. The members of the local board shall reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be appointed. A person employed by the office, the Department of Health and Human Services, a residential child-caring agency, a child-placing agency, or a court shall not be appointed to a local board. A list of the members of each local board shall be sent to the department.

Source: Laws 1982, LB 714, § 4; Laws 1987, LB 239, § 3; Laws 1996, LB 1044, § 196; Laws 1999, LB 240, § 2; Laws 2012, LB998, § 6; Laws 2013, LB265, § 34.
Effective date May 26, 2013.

43-1311.03 Written independent living transition proposal; development; contents; transition team; department; duties; information regarding Young Adult Voluntary Services and Support Act; notice; contents.

(1) When a child placed in foster care turns sixteen years of age or enters foster care and is at least sixteen years of age, a written independent living transition proposal shall be developed by the Department of Health and Human Services at the direction and involvement of the child to prepare for the transition from foster care to adulthood. The transition proposal shall be personalized based on the child's needs. The transition proposal shall include, but not be limited to, the following needs:

(a) Education;

(b) Employment services and other workforce support;

(c) Health and health care coverage, including the child's potential eligibility for medicaid coverage under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;

(d) Financial assistance, including education on credit card financing, banking, and other services;

(e) Housing;

(f) Relationship development; and

(g) Adult services, if the needs assessment indicates that the child is reasonably likely to need or be eligible for services or other support from the adult services system.

(2) The transition proposal shall be developed and frequently reviewed by the department in collaboration with the child's transition team. The transition team shall be comprised of the child, the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals who have knowledge of services available to the child.

(3) The transition proposal shall be considered a working document and shall be, at the least, updated for and reviewed at every permanency or review hearing by the court.

(4) The final transition proposal prior to the child's leaving foster care shall specifically identify how the need for housing will be addressed.

(5) If the child is interested in pursuing higher education, the transition proposal shall provide for the process in applying for any applicable state, federal, or private aid.

(6) A child adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and who is in an out-of-home placement shall receive information regarding the Young Adult Voluntary Services and Support Act and the extended services and support available under the act. The department shall create a clear and developmentally appropriate written notice discussing the rights of eligible young adults to receive extended services and support. The notice shall include information about eligibility and requirements to receive extended services and support, the extended services and support that young adults are eligible to receive, and how young adults can access the extended services and support. The notice shall also include information about the young adult's right to request a client-directed attorney to represent the young adult pursuant to section 43-4510 and the benefits and role of an attorney. The department shall disseminate this information to all children who were adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and who are in an out-of-home placement at sixteen years of age and yearly thereafter until nineteen years of age, and not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living. In addition to providing the written notice, not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living, a representative of the department shall explain the information contained in the notice to the child in person and the timeline necessary to avoid a lapse in services and support.

(7) On or before the date the child reaches nineteen years of age, the department shall provide the child with (a) a certified copy of the child's birth certificate and facilitate securing a federal social security card when the child is eligible for such card and (b) all documentation required for enrollment in medicaid coverage for former foster care children as available under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013. All fees associated with securing the certified copy of the child's birth certificate shall be waived by the state.

Source: Laws 2011, LB177, § 8; Laws 2013, LB216, § 17; Laws 2013, LB269, § 3.
Effective date June 5, 2013.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB216, section 17, with LB269, section 3, to reflect all amendments.

Cross References

Young Adult Voluntary Services and Support Act, see section 43-4501.

ARTICLE 14
PARENTAL SUPPORT AND PATERNITY

Section
43-1411.01. Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

43-1411.01 Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

(1) An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a complaint with the clerk of the district court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

(2) Whenever termination of parental rights is placed in issue in any case arising under sections 43-1401 to 43-1418, the Nebraska Juvenile Code and the Parenting Act shall apply to such proceedings.

Source: Laws 1997, LB 229, § 38; Laws 1998, LB 1041, § 46; Laws 2004, LB 1207, § 40; Laws 2008, LB1014, § 46; Laws 2013, LB561, § 44.
Effective date May 30, 2013.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Parenting Act, see section 43-2920.

ARTICLE 15
NEBRASKA INDIAN CHILD WELFARE ACT

Section
43-1503. Terms, defined.

43-1503 Terms, defined.

For purposes of the Nebraska Indian Child Welfare Act, except as may be specifically provided otherwise, the term:

(1) Child custody proceeding shall mean and include:

(a) Foster care placement which shall mean any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) Termination of parental rights which shall mean any action resulting in the termination of the parent-child relationship;

(c) Preadoptive placement which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(d) Adoptive placement which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents;

(2) Extended family member shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's parent, grandparent, aunt or uncle, clan member, band member, sibling, brother-in-law or sister-in-law, niece or nephew, cousin, or stepparent;

(3) Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606;

(4) Indian child means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) Indian child's tribe means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) Indian organization means any group, association, partnership, limited liability company, corporation, or other legal entity owned or controlled by Indians or a majority of whose members are Indians;

(8) Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1602(c);

(9) Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father when paternity has not been acknowledged or established;

(10) Reservation means Indian country as defined in 18 U.S.C. 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) Secretary means the Secretary of the Interior;

(12) Tribal court means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and

operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings; and

(13) Tribal service area means a geographic area in which tribal services and programs are provided to Native American people.

Source: Laws 1985, LB 255, § 3; Laws 1993, LB 121, § 216; Laws 1999, LB 475, § 3; Laws 2013, LB265, § 35.
Effective date May 26, 2013.

ARTICLE 24

JUVENILE SERVICES

Section
43-2402. Terms, defined.
43-2404. Grants; use.
43-2404.01. Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.
43-2404.02. Community-based Juvenile Services Aid Program; created; use; reports.
43-2411. Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.
43-2412. Coalition; powers and duties.

43-2402 Terms, defined.

For purposes of the Juvenile Services Act:

(1) Coalition means the Nebraska Coalition for Juvenile Justice established pursuant to section 43-2411;

(2) Commission means the Nebraska Commission on Law Enforcement and Criminal Justice;

(3) Commission Grant Program means grants provided to eligible applicants under section 43-2406;

(4) Community-based Juvenile Services Aid Program means aid to counties and federally recognized or state-recognized Indian tribes provided under section 43-2404.02;

(5) Eligible applicant means a community-based agency or organization, political subdivision, school district, federally recognized or state-recognized Indian tribe, or state agency necessary to comply with the federal act;

(6) Federal act means the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 et seq., as the act existed on January 1, 2013;

(7) Juvenile means a person who is under eighteen years of age; and

(8) Office of Juvenile Services means the Office of Juvenile Services created in section 43-404.

Source: Laws 1990, LB 663, § 2; Laws 1992, LB 447, § 6; Laws 2000, LB 1167, § 41; Laws 2001, LB 640, § 3; Laws 2013, LB561, § 45.
Effective date May 30, 2013.

43-2404 Grants; use.

The coalition shall make award recommendations to the commission, at least annually, in accordance with the Juvenile Services Act and the federal act for

grants made under the Commission Grant Program. Such grants shall be used to assist in the implementation and operation of programs or services identified in the applicable comprehensive juvenile services plan, to include: Programs for local planning and service coordination; screening, assessment, and evaluation; diversion; alternatives to detention; family support services; treatment services; reentry services; truancy prevention and intervention programs; and other services documented by data that will positively impact juveniles and families in the juvenile justice system.

Source: Laws 1990, LB 663, § 4; Laws 1992, LB 447, § 8; Laws 1997, LB 424, § 2; Laws 2000, LB 1167, § 43; Laws 2001, LB 640, § 5; Laws 2013, LB561, § 46.
Effective date May 30, 2013.

43-2404.01 Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.

(1) To be eligible for participation in either the Commission Grant Program or the Community-based Juvenile Services Aid Program, a comprehensive juvenile services plan shall be developed, adopted, and submitted to the commission in accordance with the federal act and rules and regulations adopted and promulgated by the commission in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, and the University of Nebraska at Omaha, Juvenile Justice Institute. Such plan may be developed by eligible applicants for the Commission Grant Program and by individual counties, by multiple counties, by federally recognized or state-recognized Indian tribes, or by any combination of the three for the Community-based Juvenile Services Aid Program. Comprehensive juvenile services plans shall:

(a) Be developed by a comprehensive community team representing juvenile justice system stakeholders;

(b) Be based on data relevant to juvenile and family issues;

(c) Identify policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes;

(d) Identify clear implementation strategies; and

(e) Identify how the impact of the program or service will be measured.

(2) Any portion of the comprehensive juvenile services plan dealing with administration, procedures, and programs of the juvenile court shall not be submitted to the commission without the concurrence of the presiding judge or judges of the court or courts having jurisdiction in juvenile cases for the geographic area to be served. Programs or services established by such plans shall conform to the family policy tenets prescribed in sections 43-532 to 43-534 and shall include policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes.

(3) The commission, in consultation with the University of Nebraska at Omaha, Juvenile Justice Institute, shall contract for the development and administration of a statewide system to monitor and evaluate the effectiveness

of plans and programs receiving funds from (a) the Commission Grant Program and (b) the Community-based Juvenile Services Aid Program in preventing persons from entering the juvenile justice system and in rehabilitating juvenile offenders.

(4) There is established within the commission the position of Director of the Community-based Juvenile Services Aid Program, appointed by the executive director of the commission. The director shall have extensive experience in developing and providing community-based services.

(5) The director shall be supervised by the executive director of the commission. The director shall:

(a) Provide technical assistance and guidance for the development of comprehensive juvenile services plans;

(b) Coordinate the review of the Community-based Juvenile Services Aid Program application as provided in section 43-2404.02 and make recommendations for the distribution of funds provided under the Community-based Juvenile Services Aid Program, giving priority to those grant applications funding programs and services that will divert juveniles from the juvenile justice system, impact and effectively treat juveniles within the juvenile justice system, and reduce the juvenile detention population or assist juveniles in transitioning from out-of-home placements to in-home treatments. The director shall ensure that no funds appropriated or distributed under the Community-based Juvenile Services Aid Program are used for purposes prohibited under subsection (3) of section 43-2404.02;

(c) Develop data collection and evaluation protocols, oversee statewide data collection, and generate an annual report on the effectiveness of juvenile services that receive funds from the Community-based Juvenile Services Aid Program;

(d) Develop relationships and collaborate with juvenile justice system stakeholders, provide education and training as necessary, and serve on boards and committees when approved by the commission;

(e) Assist juvenile justice system stakeholders in developing policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes;

(f) Develop and coordinate a statewide working group as a subcommittee of the coalition to assist in regular strategic planning related to supporting, funding, monitoring, and evaluating the effectiveness of plans and programs receiving funds from the Community-based Juvenile Services Aid Program; and

(g) Work with the coordinator for the coalition in facilitating the coalition's obligations under the Community-based Juvenile Services Aid Program.

Source: Laws 2001, LB 640, § 6; Laws 2005, LB 193, § 1; Laws 2013, LB561, § 47.
Effective date May 30, 2013.

43-2404.02 Community-based Juvenile Services Aid Program; created; use; reports.

(1) There is created a separate and distinct budgetary program within the commission to be known as the Community-based Juvenile Services Aid Program. Funding acquired from participation in the federal act, state General

Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid in the establishment and provision of community-based services for juveniles who come in contact with the juvenile justice system.

(2) The annual General Fund appropriation to the Community-based Juvenile Services Aid Program shall be apportioned as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county and federally recognized or state-recognized Indian tribe who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from the county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three which is receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.

(3) Funds provided under the Community-based Juvenile Services Aid Program shall be used exclusively to assist the aid recipient in the implementation and operation of programs or the provision of services identified in the aid recipient's comprehensive juvenile services plan, including programs for local planning and service coordination; screening, assessment, and evaluation; diversion; alternatives to detention; family support services; treatment services; reentry services; truancy prevention and intervention programs; and other services that will positively impact juveniles and families in the juvenile justice system. In distributing funds provided under the Community-based Juvenile Services Aid Program, aid recipients shall prioritize programs and services that will divert juveniles from the juvenile justice system, reduce the population of juveniles in juvenile detention and secure confinement, and assist in transitioning juveniles from out-of-home placements. No funds appropriated or distributed under the Community-based Juvenile Services Aid Program shall be used for construction of secure detention facilities, secure youth treatment facilities, or secure youth confinement facilities. Aid received under this section shall not be used for capital construction or the lease or acquisition of facilities except for additional probation offices associated with carrying out the expanded probation duties in Laws 2013, LB561, and shall not be used to replace existing funding for programs or services. Any funds not distributed to counties under this subsection shall be retained by the commission to be distributed on a competitive basis under the Community-based Juvenile Services Aid Program for a county, multiple counties, federally recognized or state-recognized Indian tribes, or any combination of the three demonstrating additional need in the funding areas identified in this subsection.

(4) Any recipient of funding under the Community-based Juvenile Services Aid Program shall file an annual report as required by rules and regulations adopted and promulgated by the commission. The report shall include, but not be limited to, the type of juvenile service, how the service met the goals of the comprehensive juvenile services plan, demographic information on the total number of juveniles served, program success rates, the total number of juveniles sent to secure juvenile detention or residential treatment and secure confinement, and a listing of the expenditures for detention, residential treatment, and nonresidential treatment.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds appropriated under the Community-based

Juvenile Services Aid Program. The report shall include, but not be limited to, an aggregate report of the use of the Community-based Juvenile Services Aid Program funds, including the types of juvenile services and programs that were funded, demographic information on the total number of juveniles served, program success rates, the total number of juveniles sent to secure juvenile detention or residential treatment and secure confinement, and a listing of the expenditures of all counties and federally recognized or state-recognized Indian tribes for detention, residential treatment, and secure confinement. The report submitted to the Legislature shall be submitted electronically.

(6) The commission shall adopt and promulgate rules and regulations for the Community-based Juvenile Services Aid Program in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, the Nebraska Association of County Officials, and the University of Nebraska at Omaha, Juvenile Justice Institute. The rules and regulations shall include, but not be limited to:

(a) The required elements of a comprehensive juvenile services plan and planning process;

(b) The Community-based Juvenile Services Aid Program formula, review process, match requirements, and fund distribution. The distribution process shall ensure a conflict of interest policy;

(c) A distribution process for funds retained under subsection (3) of this section;

(d) A plan for evaluating the effectiveness of plans and programs receiving funding;

(e) A reporting process for aid recipients; and

(f) A reporting process for the commission to the Governor and Legislature. The report shall be made electronically to the Governor and the Legislature.

Source: Laws 2001, LB 640, § 7; Laws 2005, LB 193, § 2; Laws 2008, LB1014, § 54; Laws 2010, LB800, § 33; Laws 2012, LB782, § 47; Laws 2013, LB561, § 48.
Effective date May 30, 2013.

43-2411 Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.

(1) The Nebraska Coalition for Juvenile Justice is created. As provided in the federal act, there shall be no less than fifteen nor more than thirty-three members of the coalition. Coalition members who are members of the judicial branch of government shall be nonvoting members of the coalition. The coalition members shall be appointed by the Governor and shall include:

(a) The Administrator of the Office of Juvenile Services;

(b) The chief executive officer of the Department of Health and Human Services or his or her designee;

(c) The Commissioner of Education or his or her designee;

(d) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;

(e) The Executive Director of the Nebraska Association of County Officials or his or her designee;

(f) The probation administrator of the Office of Probation Administration or his or her designee;

(g) One county commissioner or supervisor;

(h) One person with data analysis experience;

(i) One police chief;

(j) One sheriff;

(k) The executive director of the Foster Care Review Office;

(l) One separate juvenile court judge;

(m) One county court judge;

(n) One representative of mental health professionals who works directly with juveniles;

(o) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;

(p) One volunteer who works with juvenile offenders or potential juvenile offenders;

(q) One person who works with an alternative to a detention program for juveniles;

(r) The director or his or her designee from a youth rehabilitation and treatment center;

(s) The director or his or her designee from a secure juvenile detention facility;

(t) The director or his or her designee from a staff secure youth confinement facility;

(u) At least five members who are under twenty-four years of age when appointed;

(v) One person who works directly with juveniles who have learning or emotional difficulties or are abused or neglected;

(w) One member of the Nebraska Commission on Law Enforcement and Criminal Justice;

(x) One member of a regional behavioral health authority established under section 71-808;

(y) One county attorney; and

(z) One public defender.

(2) The terms of members appointed pursuant to subdivisions (1)(g) through (1)(z) of this section shall be three years, except that the terms of the initial appointments of members of the coalition shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. A majority of the coalition members, including the chairperson, shall not be full-time employees of federal, state, or local government. At least one-fifth of the coalition members shall be under the age of twenty-four at the time of appointment. Any vacancy on the coalition shall be filled by appointment by the Governor. The coalition shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

(3) Members of the coalition shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(4) The coalition may appoint task forces or subcommittees to carry out its work. Task force and subcommittee members shall have knowledge of, responsibility for, or interest in an area related to the duties of the coalition.

Source: Laws 1990, LB 663, § 11; Laws 1996, LB 1044, § 209; Laws 1997, LB 424, § 8; Laws 2000, LB 1167, § 48; Laws 2007, LB296, § 138; Laws 2013, LB561, § 49.
Effective date May 30, 2013.

43-2412 Coalition; powers and duties.

(1) Consistent with the purposes and objectives of the Juvenile Services Act and the federal act, the coalition shall:

(a) Make recommendations to the commission on the awarding of grants under the Commission Grant Program to eligible applicants;

(b) Identify juvenile justice issues, share information, and monitor and evaluate programs in the juvenile justice system;

(c) Recommend guidelines and supervision procedures to be used to develop or expand local diversion programs for juveniles from the juvenile justice system;

(d) Prepare an annual report to the Governor, the Legislature, the Office of Probation Administration, and the Office of Juvenile Services including recommendations on administrative and legislative actions which would improve the juvenile justice system. The report submitted to the Legislature shall be submitted electronically;

(e) Ensure widespread citizen involvement in all phases of its work; and

(f) Meet at least four times each year.

(2) Consistent with the purposes and objectives of the acts and within the limits of available time and appropriations, the coalition may:

(a) Assist and advise state and local agencies in the establishment of volunteer training programs and the utilization of volunteers;

(b) Apply for and receive funds from federal and private sources for carrying out its powers and duties; and

(c) Provide technical assistance to eligible applicants.

(3) In formulating, adopting, and promulgating the recommendations and guidelines provided for in this section, the coalition shall consider the differences among counties in population, in geography, and in the availability of local resources.

Source: Laws 1990, LB 663, § 12; Laws 1992, LB 447, § 12; Laws 1997, LB 424, § 9; Laws 2000, LB 1167, § 49; Laws 2001, LB 640, § 12; Laws 2012, LB782, § 48; Laws 2013, LB561, § 50.
Effective date May 30, 2013.

ARTICLE 25

INFANTS WITH DISABILITIES

Section
43-2507.02. State Department of Education; duties.

43-2507.02 State Department of Education; duties.

The State Department of Education shall maintain its responsibility under the Special Education Act regarding special education and related services and may adopt and promulgate rules and regulations pursuant to section 43-2516 that meet the requirements of subchapter III of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1431 to 1445, as such act and sections existed on January 1, 2013, and the regulations adopted thereunder. The department shall provide grants for the costs of such programs to the school district of residence as provided in section 79-1132.

Source: Laws 1993, LB 520, § 12; Laws 1996, LB 900, § 1049; Laws 2013, LB410, § 1.
Effective date May 30, 2013.

Cross References

Special Education Act, see section 79-1110.

ARTICLE 29
PARENTING ACT

Section
43-2930. Child information affidavit; when required; contents; hearing; temporary parenting order; contents; form; temporary support.
43-2935. Hearing; parenting plan; modification; court powers.

43-2930 Child information affidavit; when required; contents; hearing; temporary parenting order; contents; form; temporary support.

(1) Each party to a contested proceeding for a temporary order relating to parenting functions or custody, parenting time, visitation, or other access shall offer a child information affidavit as an exhibit at the hearing before the court. The child information affidavit shall be verified to the extent known or reasonably discoverable by the filing party or parties and may include the following:

(a) The name, address, and length of residence with any adults with whom each child has lived for the preceding twelve months; except that the address shall only include the county and state for a parent who is living in an undisclosed location because of safety concerns;

(b) The performance by each parent or person acting as parent for the preceding twelve months of the parenting functions relating to the daily needs of the child;

(c) A description of the work and child care schedules for the preceding twelve months of any person seeking custody, parenting time, visitation, or other access and any expected changes to these schedules in the near future;

(d) A description of the current proposed work and child care schedules; and

(e) A description of the child's school and extracurricular activities, including who is responsible for transportation of the child.

The child information affidavit may also state any circumstances of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict that are likely to pose a risk to the child and that warrant limitation on the award of temporary custody, parenting time, visitation, or other access to the child pending entry of a permanent parenting plan, including any restrain-

ing orders, protection orders, or criminal no-contact orders against either parent or a person acting as a parent by case number and jurisdiction.

(2) After a contested hearing by live testimony or affidavit, the court shall enter a temporary parenting order that includes:

(a) Provision for temporary legal custody;

(b) Provisions for temporary physical custody, which shall include either:

(i) A parenting time, visitation, or other access schedule that designates in which home each child will reside on given days of the year; or

(ii) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(c) Designation of a temporary residence for the child;

(d) Reference to any existing restraining orders, protection orders, or criminal no-contact orders as well as provisions for safety and a transition plan, consistent with any court's finding of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict in order to provide for the safety of a child and a parent who has physical custody of the child necessary for the best interests of the child; and

(e) If appropriate, a requirement that a parent complete a program of intervention for perpetrators of domestic violence, a program for drug or alcohol abuse, or a program designed to correct another factor as a condition of parenting time.

(3) A party may move for an order to show cause, and the court may enter a modified temporary parenting order.

(4) The State Court Administrator's office shall create a form that may be used by the parties to create a child information affidavit setting forth the elements identified in this section.

(5) Provisions for temporary support for the child and other financial matters may be included in the temporary parenting order.

Source: Laws 2007, LB554, § 11; Laws 2008, LB1014, § 61; Laws 2013, LB561, § 51.
Effective date May 30, 2013.

43-2935 Hearing; parenting plan; modification; court powers.

(1) After a hearing on the record, the court shall determine whether the submitted parenting plan meets all of the requirements of the Parenting Act and is in the best interests of the child. If the parenting plan lacks any of the elements required by the act or is not in the child's best interests, the court shall modify and approve the parenting plan as modified, reject the parenting plan and order the parties to develop a new parenting plan, or reject the parenting plan and create a parenting plan that meets all the required elements and is in the best interests of the child. The court may include in the parenting plan:

(a) A provision for resolution of disputes that arise under the parenting plan, including provisions for suspension of parenting time, visitation, and other access when new findings of child abuse or neglect, domestic intimate partner abuse, criminal activity affecting the best interests of a child, or the violation of a protection order, restraining order, or criminal no-contact order occur, until

a modified custody order or parenting plan with provisions for safety or a transition plan, or both, is in place; and

(b) Consequences for failure to follow parenting plan provisions.

(2) A hearing is not required under this section:

(a) In a divorce action, if both parties have waived in writing the requirement for a hearing under section 42-361;

(b) In an action for a legal separation, if both parties have waived in writing the requirement for a hearing under section 42-361.01; or

(c) In any other action creating or modifying a parenting plan including an action to establish paternity, if (i) all parties have waived in writing the requirement of the hearing, (ii) the court has sufficient basis to make a finding that it has subject matter jurisdiction over the action and personal jurisdiction over all parties, (iii) all documents required by the court and by law have been filed, and (iv) the parties have entered into a written agreement, signed by the parties under oath, resolving all issues presented by the pleadings.

Source: Laws 2007, LB554, § 16; Laws 2012, LB899, § 3; Laws 2013, LB107, § 1.
Effective date September 6, 2013.

ARTICLE 33

SUPPORT ENFORCEMENT

(e) STATE DISBURSEMENT UNIT

(e) STATE DISBURSEMENT UNIT

43-3342.05 Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(1) The Child Support Advisory Commission is created. Commission members shall include:

(a) Two district court judges whose jurisdiction includes domestic relations, to be appointed by the Supreme Court;

(b) One member of the Nebraska State Bar Association who practices primarily in the area of domestic relations;

(c) One county attorney who works in child support;

(d) One professional who works in the field of economics or mathematics or another field of expertise relevant to child support;

(e) One custodial parent who has a court order to receive child support;

(f) One noncustodial parent who is under a support order to pay child support;

(g) The chairperson of the Judiciary Committee of the Legislature, who shall serve as the chairperson of the commission;

(h) The chairperson of the Health and Human Services Committee of the Legislature;

(i) The State Treasurer or his or her designee;

(j) The State Court Administrator or his or her designee; and

(k) The director of the Title IV-D Division or his or her designee.

(2)(a) The Supreme Court shall notify the Executive Board of the Legislative Council of its intent to review the child support guidelines pursuant to section 42-364.16. Following such notification, the chairperson of the commission shall call a meeting of the commission.

(b) Each time the commission meets pursuant to subdivision (2)(a) of this section, the Supreme Court shall make appointments to fill the membership under subdivision (1)(a) of this section and the chairperson of the Executive Board shall make appointments to fill each membership under subdivisions (1)(b) through (f) of this section. The terms of these members shall expire after the commission has fulfilled its duties pursuant to subsection (3) of this section.

(c) Members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

(d) If determined to be necessary to perform the duties of the commission, the commission may hire, contract, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff with prior approval of the chairperson of the Executive Board.

(e) For administrative purposes, the commission shall be managed and administered by the Legislative Council.

(3) The duties of the commission shall include, but are not limited to:

(a) Reviewing the child support guidelines adopted by the Supreme Court and recommending, if appropriate, any changes to the guidelines. Whenever practicable, the commission shall base its recommendations on economic data and statistics collected in the State of Nebraska. In reviewing the guidelines and formulating recommendations, the commission may conduct public hearings around the state; and

(b) Presenting reports, as deemed necessary, of its activities and recommendations to the Supreme Court and the Executive Board. Any reports submitted to the Executive Board shall be submitted electronically.

(4) The Supreme Court shall review the commission's reports. The Supreme Court may amend the child support guidelines established pursuant to section 42-364.16 based upon the commission's recommendations.

Source: Laws 2000, LB 972, § 5; Laws 2002, LB 1062, § 5; Laws 2006, LB 1113, § 43; Laws 2013, LB222, § 11.
Effective date May 8, 2013.

ARTICLE 35

NEBRASKA COUNTY JUVENILE SERVICES PLAN ACT

Section
43-3503. Legislative intent; county powers and duties.

43-3503 Legislative intent; county powers and duties.

(1) It is the intent of the Legislature to encourage counties to develop a continuum of nonsecure detention services for the purpose of enhancing, developing, and expanding the availability of such services to juveniles requiring nonsecure detention.

(2) A county may enhance, develop, or expand nonsecure detention services as needed with private or public providers. Grants from the Commission Grant Program and aid from the Community-based Juvenile Services Aid Program under the Juvenile Services Act and the federal Juvenile Justice and Delinquency Prevention Act of 1974 may be used to fund nonsecure detention services. Each county shall routinely review services provided by contract providers and modify services as needed.

Source: Laws 2000, LB 1167, § 3; Laws 2001, LB 640, § 13; Laws 2013, LB561, § 52.
Effective date May 30, 2013.

Cross References

Juvenile Services Act, see section 43-2401.

ARTICLE 37
COURT APPOINTED SPECIAL ADVOCATE ACT

Section
43-3718. Court Appointed Special Advocate Fund; created; use; investment.
43-3719. Supreme Court; award grants; purposes.
43-3720. Applicant awarded grant; report; contents; Supreme Court; powers.

43-3718 Court Appointed Special Advocate Fund; created; use; investment.

The Court Appointed Special Advocate Fund is created. The fund shall be under the control of the Supreme Court and administered by the State Court Administrator. The fund shall be used for grants as provided in section 43-3719. The fund shall consist of transfers, grants, donations, gifts, devises, and bequests. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Interest earned shall be credited back to the fund.

Source: Laws 2011, LB463, § 15; Laws 2013, LB199, § 18.
Effective date May 26, 2013.

Cross References

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

43-3719 Supreme Court; award grants; purposes.

(1) The Supreme Court shall award grants from the Court Appointed Special Advocate Fund as provided in subsection (2) of this section to any court appointed special advocate program that applies for the grant and:

(a) Is a nonprofit organization organized under section 501(c)(3) of the Internal Revenue Code;

(b) Has the ability to operate statewide; and

(c) Has an affiliation agreement with local programs that meet the requirements of section 43-3706.

(2) The Supreme Court shall award grants up to the amount credited to the fund per fiscal year as follows:

(a) Up to ten thousand dollars may be used by the court to administer this section;

(b) Of the remaining amount, eighty percent shall be awarded as grants used to recruit new court appointed special advocate volunteers and to defray the cost of training court appointed special advocate volunteers;

(c) Of the remaining amount, ten percent shall be awarded as grants used to create innovative programming to implement the Court Appointed Special Advocate Act; and

(d) Of the remaining amount, ten percent shall be awarded as grants used to expand court appointed special advocate programs into counties that have no programs or limited programs.

Source: Laws 2011, LB463, § 16; Laws 2013, LB199, § 19.
Effective date May 26, 2013.

43-3720 Applicant awarded grant; report; contents; Supreme Court; powers.

(1) Each applicant who is awarded a grant under section 43-3719 shall provide the Supreme Court, Clerk of the Legislature, and Governor prior to December 31 of each year a report regarding the grant detailing:

(a) The number of court appointed special advocate volunteers trained during the previous fiscal year;

(b) The cost of training the court appointed special advocate volunteers trained during the previous fiscal year;

(c) The number of court appointed special advocate volunteers recruited during the previous fiscal year;

(d) A description of any programs described in subdivision (2)(d) of section 43-3719;

(e) The total number of courts being served by court appointed special advocate programs during the previous fiscal year; and

(f) The total number of children being served by court appointed special advocate volunteers during the previous fiscal year.

The report submitted to the Clerk of the Legislature shall be submitted electronically.

(2) The Supreme Court, as part of any application process required for a grant pursuant to section 43-3719, may require the applicant to report the information required pursuant to subsection (1) of this section.

Source: Laws 2011, LB463, § 17; Laws 2012, LB782, § 52; Laws 2013, LB199, § 20.
Effective date May 26, 2013.

ARTICLE 41

NEBRASKA JUVENILE SERVICE DELIVERY PROJECT

Section

43-4101 Nebraska Juvenile Service Delivery Project; established; purpose; evaluation; reimbursement for costs; Department of Health and Human Services; duties.

(1) The Nebraska Juvenile Service Delivery Project shall be established as a pilot program administered by the Office of Probation Administration. The pilot program shall be evaluated by the University of Nebraska Medical Center's College of Public Health. The project may be expanded by the Office of Probation Administration. The purpose of the pilot program is to (a) provide access to services in the community for juveniles placed on probation, (b) prevent unnecessary commitment of juveniles to the Department of Health and Human Services and to the Office of Juvenile Services, (c) eliminate barriers preventing juveniles from receiving needed services, (d) prevent unnecessary penetration of juveniles further into the juvenile justice system, (e) enable the juvenile's needs to be met in the least intrusive and least restrictive manner while maintaining the safety of the juvenile and the community, (f) reduce the duplication of resources within the juvenile justice system through intense coordinated case management and supervision, and (g) use evidence-based practices and responsive case management to improve outcomes for adjudicated juveniles.

(2) On or before July 1, 2013, the Department of Health and Human Services shall apply for reimbursement under Title IV-E of the federal Social Security Act, as amended, for reimbursable costs associated with the Nebraska Juvenile Service Delivery Project. The reimbursed funds received by the department shall be remitted to the State Treasurer for credit to the Probation Program Cash Fund for reimbursement of expenses incurred by the Office of Probation Administration pursuant to the Nebraska Juvenile Service Delivery Project.

Source: Laws 2012, LB985, § 1; Laws 2013, LB269, § 4.
Effective date June 5, 2013.

43-4102 Nebraska Juvenile Service Delivery Project; expansion; funding; information-sharing process; established; detention costs; payment.

(1) It is the intent of the Legislature that the Nebraska Juvenile Service Delivery Project, established as a pilot program under section 43-4101 within the Office of Probation Administration, be expanded statewide in a three-step, phase-in process beginning July 1, 2013, with full implementation by July 1, 2014. The expansion of the project will result in the Office of Probation Administration taking over the duties of the Office of Juvenile Services with respect to its previous functions of community supervision and parole of juvenile law violators and of evaluations for such juveniles. The Office of Juvenile Services shall continue for the purpose of operating the youth rehabilitation and treatment centers and the care and custody of the juveniles placed at such centers. Expansion of the project shall be funded by the transfer of funds from the Department of Health and Human Services and the Office of Juvenile Services used to fully fund community-based services and juvenile parole to the Office of Probation Administration.

(2) There shall be established through the use of technology an information-sharing process to support and enhance the exchange of information between the Department of Health and Human Services, the Office of Probation Administration, and the Nebraska Commission on Law Enforcement and Criminal Justice. It is the intent of the Legislature to appropriate two hundred fifty thousand dollars from the General Fund to the Office of Probation Administration to facilitate the information-sharing process.

(3) It is the intent of the Legislature that detention costs for a juvenile shall be paid by the county containing the court which issued the order to detain in the following situations:

(a) A juvenile has no prior contact with the juvenile justice system and is placed in predisposition detention; or

(b) A juvenile is placed in predisposition detention for a new violation of law while under the supervision of the Office of Probation Administration.

(4) It is the intent of the Legislature that detention costs for a juvenile shall be paid by the Office of Probation Administration in the following situations:

(a) A juvenile is placed in detention as the result of an alleged violation of probation; or

(b) A juvenile is placed in post-disposition detention under the supervision of the Office of Probation Administration while awaiting placement.

(5) For purposes of this section, detention means a secure juvenile detention facility or staff secure juvenile facility.

Source: Laws 2013, LB561, § 55.
Effective date May 30, 2013.

ARTICLE 42

NEBRASKA CHILDREN'S COMMISSION

Section

43-4202 Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant; termination of commission.

(1) The Nebraska Children's Commission is created as a high-level leadership body to (a) create a statewide strategic plan for reform of the child welfare system programs and services in the State of Nebraska and (b) review the operations of the Department of Health and Human Services regarding child welfare programs and services and recommend, as a part of the statewide strategic plan, options for attaining the legislative intent stated in section 43-4201, either by the establishment of a new division within the department or the establishment of a new state agency to provide all child welfare programs and services which are the responsibility of the state. The commission shall provide a permanent forum for collaboration among state, local, community, public, and private stakeholders in child welfare programs and services.

(2) The commission shall include the following voting members:

(a) The executive director of the Foster Care Review Office; and

(b) Seventeen members appointed by the Governor. The members appointed pursuant to this subdivision shall represent stakeholders in the child welfare system and shall include: (i) A director of a child advocacy center; (ii) an administrator of a behavioral health region established pursuant to section 71-807; (iii) a community representative from each of the service areas designated pursuant to section 81-3116. In the eastern service area designated pursuant to such section, the representative may be from a lead agency of a pilot project established under section 68-1212 or a collaborative member; (iv) a prosecuting attorney who practices in juvenile court; (v) a guardian ad litem; (vi) a biological parent currently or previously involved in the child welfare system; (vii) a foster parent; (viii) a court appointed special advocate volunteer; (ix) a member of a local foster care review board; (x) a child welfare service agency that directly provides a wide range of child welfare services and is not a member of a lead agency collaborative; (xi) a young adult previously in foster care; (xii) a representative of a child advocacy organization that deals with legal and policy issues that include child welfare; and (xiii) a representative of a federally recognized Indian tribe residing within the State of Nebraska and appointed within thirty days after June 5, 2013, from a list of three nominees submitted by the Commission on Indian Affairs.

(3) The Nebraska Children's Commission shall have the following nonvoting, ex officio members: (a) The chairperson of the Health and Human Services Committee of the Legislature or a committee member designated by the chairperson; (b) the chairperson of the Judiciary Committee of the Legislature or a committee member designated by the chairperson; (c) the chairperson of the Appropriations Committee of the Legislature or a committee member designated by the chairperson; (d) three persons appointed by the State Court Administrator; (e) the chief executive officer of the Department of Health and Human Services or his or her designee; (f) the Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services or his or her designee; and (g) the Inspector General of Nebraska Child Welfare. The nonvoting, ex officio members may attend commission meetings and participate in the discussions of the commission, provide information to the commission on the policies, programs, and processes of each of their respective bodies, gather information for the commission, and provide information back to their respective bodies from the commission. The nonvoting, ex officio members shall not vote on decisions by the commission or on the direction or development of the statewide strategic plan pursuant to section 43-4204.

(4) The commission shall meet within sixty days after April 12, 2012, and shall select from among its members a chairperson and vice-chairperson and conduct any other business necessary to the organization of the commission. The commission shall meet not less often than once every three months, and meetings of the commission may be held at any time on the call of the chairperson. The commission may hire staff to carry out the responsibilities of the commission. For administrative purposes, the offices of the staff of the commission shall be located in the Foster Care Review Office. The commission shall hire a consultant with experience in facilitating strategic planning to provide neutral, independent assistance in developing the statewide strategic

plan. The commission shall terminate on June 30, 2016, unless continued by the Legislature.

(5) The commission, with assistance from the executive director of the Foster Care Review Office, shall employ a policy analyst to provide research and expertise to the commission relating to the child welfare system. The policy analyst shall work in conjunction with the staff of the commission. His or her responsibilities may include, but are not limited to: (a) Monitoring the Nebraska child welfare system and juvenile justice system to provide information to the commission; (b) analyzing child welfare and juvenile justice public policy through research and literature reviews and drafting policy reports when requested; (c) managing or leading projects or tasks and providing resource support to commission members and committees as determined by the chairperson of the commission; (d) serving as liaison among child welfare and juvenile justice stakeholders and the public and responding to information inquiries as required; and (e) other duties as assigned by the commission.

(6) Members of the commission shall be reimbursed for their actual and necessary expenses as members of such commission as provided in sections 81-1174 to 81-1177.

Source: Laws 2012, LB821, § 2; Laws 2013, LB269, § 5; Laws 2013, LB530, § 5.
Effective date June 5, 2013.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB269, section 5, with LB530, section 5, to reflect all amendments.

43-4203 Nebraska Children's Commission; duties; establish networks; service area; develop strategies; committees created; use of facilitated conferencing.

(1) The Nebraska Children's Commission shall work with administrators from each of the service areas designated pursuant to section 81-3116, the teams created pursuant to section 28-728, local foster care review boards, child advocacy centers, the teams created pursuant to the Supreme Court's Through the Eyes of the Child Initiative, community stakeholders, and advocates for child welfare programs and services to establish networks in each of such service areas. Such networks shall permit collaboration to strengthen the continuum of services available to child welfare agencies and to provide resources for children and juveniles outside the child protection system. Each service area shall develop its own unique strategies to be included in the statewide strategic plan. The Department of Health and Human Services shall assist in identifying the needs of each service area.

(2)(a) The commission shall create a committee to examine state policy regarding the prescription of psychotropic drugs for children who are wards of the state and the administration of such drugs to such children. Such committee shall review the policy and procedures for prescribing and administering such drugs and make recommendations to the commission for changes in such policy and procedures.

(b) The commission shall create a committee to examine the structure and responsibilities of the Office of Juvenile Services as they exist on April 12, 2012. Such committee shall review the role and effectiveness of the youth rehabilitation and treatment centers in the juvenile justice system and make recommendations to the commission on the future role of the youth rehabilitation

and treatment centers in the juvenile justice continuum of care, including what populations they should serve and what treatment services should be provided at the centers in order to appropriately serve those populations. Such committee shall also review how mental and behavioral health services are provided to juveniles in secure residential placements and the need for such services throughout Nebraska and make recommendations to the commission relating to those systems of care in the juvenile justice system. The committee shall collaborate with the University of Nebraska at Omaha, Juvenile Justice Institute, the University of Nebraska Medical Center, Center for Health Policy, the behavioral health regions as established in section 71-807, and state and national juvenile justice experts to develop recommendations. If the committee's recommendations include maintaining the Youth Rehabilitation and Treatment Center-Kearney, the recommendation shall include a plan to implement a rehabilitation and treatment model by upgrading the center's physical structure, staff, and staff training and the incorporation of evidence-based treatments and programs. The recommendations shall be delivered to the commission and electronically to the Judiciary Committee of the Legislature by December 1, 2013.

(c) The commission may organize committees as it deems necessary. Members of the committees may be members of the commission or may be appointed, with the approval of the majority of the commission, from individuals with knowledge of the committee's subject matter, professional expertise to assist the committee in completing its assigned responsibilities, and the ability to collaborate within the committee and with the commission to carry out the powers and duties of the commission.

(d) The Title IV-E Demonstration Project Committee created pursuant to section 43-4208 and the Foster Care Reimbursement Rate Committee created pursuant to section 43-4212 are under the jurisdiction of the commission.

(3) The commission shall work with the office of the State Court Administrator, as appropriate, and entities which coordinate facilitated conferencing as described in section 43-247.01. Facilitated conferencing shall be included in statewide strategic plan discussions by the commission. Facilitated conferencing shall continue to be utilized and maximized, as determined by the court of jurisdiction, during the development of the statewide strategic plan. Funding and contracting of facilitated conferencing entities shall continue to be provided by the Department of Health and Human Services to at least the same extent as such funding and contracting are being provided on April 12, 2012.

(4) The commission shall gather information and communicate with juvenile justice specialists of the Office of Probation Administration and county officials with respect to any county-operated practice model participating in the Crossover Youth Program of the Center for Juvenile Justice Reform at Georgetown University.

(5) The commission shall coordinate and gather information about the progress and outcomes of the Nebraska Juvenile Service Delivery Project established pursuant to section 43-4101.

Source: Laws 2012, LB821, § 3; Laws 2013, LB269, § 6; Laws 2013, LB530, § 6; Laws 2013, LB561, § 56.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB269, section 6, with LB530, section 6, and LB561, section 56, to reflect all amendments.

Note: Changes made by LB561 became effective May 30, 2013. Changes made by LB269 and LB530 became effective June 5, 2013.

43-4208 Title IV-E Demonstration Project Committee; created; members; duties; powers; implementation plan; contents; report; Nebraska Children's Commission; powers; Office of Probation Administration; duties.

(1)(a) The Title IV-E Demonstration Project Committee is created. The members of the committee shall be appointed by the Director of Children and Family Services or his or her designee and shall include representatives of the Department of Health and Human Services and representatives of child welfare stakeholder entities, including one advocacy organization which deals with legal and policy issues that include child welfare, one advocacy organization the singular focus of which is issues impacting children, two child welfare service agencies that provide a wide range of child welfare services, and one entity which is a lead agency as of March 1, 2012. Members of the committee shall have experience or knowledge in the area of child welfare that involves Title IV-E eligibility criteria and activities. In addition, there shall be at least one ex officio member of the committee, appointed by the State Court Administrator. The ex officio member or members shall not be involved in decisionmaking, implementation plans, or reporting but may attend committee meetings, provide information to the committee about the processes and programs of the court system involving children and juveniles, and inform the State Court Administrator of the committee's activities. The committee shall be convened by the director within thirty days after April 12, 2012.

(b) The committee shall review, report, and provide recommendations regarding the application of the Department of Health and Human Services for a demonstration project pursuant to 42 U.S.C. 1320a-9 to obtain a waiver as provided in 42 U.S.C. 1320a-9(b), as such section existed on January 1, 2012. The committee may engage a consultant with expertise in Title IV-E demonstration project applications and requirements.

(c) The committee shall (i) review Nebraska's current status of Title IV-E participation and penetration rates, (ii) review strategies and solutions for raising Nebraska's participation rate and reimbursement for Title IV-E in child placement, case management, replacement, training, adoption, court findings, and proceedings, and (iii) recommend specific actions for addressing barriers to participation and reimbursement.

(d) The committee shall provide an implementation plan and a timeline for making application for a Title IV-E waiver. The implementation plan shall support and align with the goals of the statewide strategic plan required pursuant to section 43-4204, including, but not limited to, maximizing federal funding to be able to utilize state and federal funding for a broad array of services for children, including prevention, intervention, and community-based, in-home, and out-of-home services to attain positive outcomes for the safety and well-being of and to expedite permanency for children. The committee shall report on its activities to the Health and Human Services Committee of the Legislature on or before July 1, 2012, September 1, 2012, and November 1, 2012, and shall provide a final written report to the department, the Health and Human Services Committee of the Legislature, and the Governor by December 15, 2012.

(e) The Title IV-E Demonstration Project Committee is under the jurisdiction of the Nebraska Children's Commission created pursuant to section 43-4202. The commission may make changes it deems necessary to comply with this subsection to facilitate the application for such demonstration project.

(2) The committee's implementation plan shall address the demonstration project designed to meet the requirements of 42 U.S.C. 1320a-9, including, but not limited to, the following:

(a) Increasing permanency for children by reducing the time in foster care placements when possible and promoting a successful transition to adulthood for older youth;

(b) Increasing positive outcomes for children and families in their homes and communities, including tribal communities, and improving the safety and well-being of children;

(c) Preventing child abuse and neglect and the reentry of children into foster care; and

(d) Considering the options of developing a program to (i) permit foster care maintenance payments to be made under Title IV-E of the federal Social Security Act, as such act existed on January 1, 2012, to a long-term therapeutic family treatment center on behalf of children residing in such a center or (ii) identify and address domestic violence that endangers children and results in the placement of children in foster care.

(3) The implementation plan for the demonstration project shall include information showing:

(a) The ability and capacity of the department to effectively use the authority to conduct a demonstration project under this section by identifying changes the department has made or plans to make in policies, procedures, or other elements of the state's child welfare program that will enable the state to successfully achieve the goal or goals of the project; and

(b) That the department has implemented, or plans to implement within three years after the date of submission of its application under this section or within two years after the date on which the United States Secretary of Health and Human Services approves such application, whichever is later, at least two of the child welfare program improvement policies described in 42 U.S.C. 1320a-9(a)(7), as such section existed on January 1, 2012.

(4) At least one of the child welfare program improvement policies to be implemented by the Department of Health and Human Services under the demonstration project shall be a policy that the state has not previously implemented as of the date of submission of its application under this section.

(5) On or before July 1, 2013, the Department of Health and Human Services, in conjunction with the Office of Probation Administration, shall develop a policy for reimbursement of all allowable foster care maintenance costs as provided under Title IV-E of the federal Social Security Act, 42 U.S.C. 672, as such act and section existed on January 1, 2013.

(6) For purposes of this section, long-term therapeutic family treatment center has the definition found in 42 U.S.C. 1320a-9(a)(8), as such section existed on January 1, 2012.

Source: Laws 2012, LB820, § 1; Laws 2013, LB269, § 7.
Effective date June 5, 2013.

43-4212 Repealed. Laws 2013, LB 530, § 9.

43-4213 Foster parents; additional stipend; payment; administrative fee.

In recognition of Nebraska foster parents' essential contribution to the safety and well-being of Nebraska's foster children and the need for additional compensation for the services provided by Nebraska foster parents, beginning July 1, 2012, through June 30, 2014, all foster parents providing foster care in Nebraska, including traditional, agency-based, licensed, approved, relative placement, and child-specific foster care, shall receive an additional stipend of three dollars and ten cents per day per child. The stipend shall be in addition to the current foster care reimbursement rates for relatives and foster parents contracting with the Department of Health and Human Services and in addition to the relative and tiered rate paid to a contractor for agency-based foster parents. The additional stipend shall be paid monthly through the agency that is contracting with the foster parent or, in the case of a foster parent contracting with the department, directly from the department. The contracting agency shall receive an administrative fee of twenty-five cents per child per day for processing the payments for the benefit of the foster parents and the state, which administrative fee shall be paid monthly by the state. The administrative fee shall not reduce the stipend of three dollars and ten cents provided by this section.

Source: Laws 2012, LB820, § 6; Laws 2013, LB530, § 7.
Effective date June 5, 2013.

43-4214 Foster care reimbursement; foster care system; legislative findings and intent.

(1) The Legislature (a) finds that it was the intent of sections 43-4208 to 43-4213 to provide bridge funding to bring Nebraska's foster care reimbursement rates in line with foster care reimbursement rates in the rest of the country and (b) recognizes the importance of a stable payment to foster parents to ensure that families are able to budget for needs while caring for foster children.

(2) The Legislature further finds that Nebraska's foster care system has begun to stabilize. In recognition of the essential contributions of foster parents and foster care providers to foster children in Nebraska, it is the intent of the Legislature to continue existing contractual arrangements for payment to ensure the continued stabilization of the foster care system in Nebraska.

(3) It is the intent of the Legislature:

(a) To ensure that fair rates continue into the future to stem attrition of foster parents and to recruit, support, and maintain high-quality foster parents;

(b) That foster care reimbursement rates accurately reflect the cost of raising the child in the care of the state;

(c) To ensure that contracted foster care service provider agencies do not pay increased rates out of budgets determined in contracts with the Department of Health and Human Services prior to any change in rates;

(d) To maintain comparable foster care reimbursement rates to ensure retention and recruitment of high-quality foster parents and to ensure that foster children's best interests are served; and

(e) To appropriate funds to permanently replace the bridge funding described in subsection (1) of this section and provide the necessary additional funds to bring foster care reimbursement rates in compliance with the recommendations of the research and study completed by the Foster Care Reimbursement

Rate Committee as required pursuant to section 43-4212 as such section existed before June 5, 2013.

Source: Laws 2013, LB530, § 1.
Effective date June 5, 2013.

43-4215 Reimbursement rate recommendations; Division of Children and Family Services of Department of Health and Human Services; implementation; pilot project; reports; contents.

(1) On or before July 1, 2014, the Division of Children and Family Services of the Department of Health and Human Services shall implement the reimbursement rate recommendations of the Foster Care Reimbursement Rate Committee as reported to the Legislature pursuant to section 43-4212 as such section existed before June 5, 2013.

(2)(a) On or before July 1, 2013, the Division of Children and Family Services of the Department of Health and Human Services shall develop a pilot project as provided in this subsection to implement the standardized level of care assessment tools recommended by the Foster Care Reimbursement Rate Committee as reported to the Legislature pursuant to section 43-4212 as such section existed before June 5, 2013.

(b)(i) The pilot project shall comprise two groups: One in an urban area and one in a rural area. The size of each group shall be determined by the division to ensure an accurate estimate of the effectiveness and cost of implementing such tools statewide.

(ii) The Nebraska Children's Commission shall review and provide a progress report on the pilot project by October 1, 2013, to the department and electronically to the Health and Human Services Committee of the Legislature; shall provide to the department and electronically to the committee by December 1, 2013, a report including recommendations and any legislation necessary, including appropriations, to adopt the recommendations, regarding the adaptation or continuation of the implementation of a statewide standardized level of care assessment; and shall provide to the department and electronically to the committee by February 1, 2014, a final report and final recommendations of the commission.

Source: Laws 2013, LB530, § 2.
Effective date June 5, 2013.

43-4216 Foster Care Reimbursement Rate Committee; members; terms; vacancies.

(1) On or before January 1, 2016, the Nebraska Children's Commission shall appoint a Foster Care Reimbursement Rate Committee. The commission shall reconvene the Foster Care Reimbursement Rate Committee every four years thereafter.

(2) The Foster Care Reimbursement Rate Committee shall consist of no fewer than nine members, including:

(a) The following voting members: (i) Representatives from a child welfare agency that contracts directly with foster parents, from each of the service areas designated pursuant to section 81-3116; (ii) a representative from an advocacy organization which deals with legal and policy issues that include child welfare; (iii) a representative from an advocacy organization, the singular

focus of which is issues impacting children; (iv) a representative from a foster and adoptive parent association; (v) a representative from a lead agency; (vi) a representative from a child advocacy organization that supports young adults who were in foster care as children; (vii) a foster parent who contracts directly with the Department of Health and Human Services; and (viii) a foster parent who contracts with a child welfare agency; and

(b) The following nonvoting, ex officio members: (i) The chief executive officer of the Department of Health and Human Services or his or her designee and (ii) representatives from the Division of Children and Family Services of the department from each service area designated pursuant to section 81-3116, including at least one division employee with a thorough understanding of the current foster care payment system and at least one division employee with a thorough understanding of the N-FOCUS electronic data collection system. The nonvoting, ex officio members of the committee may attend committee meetings and participate in discussions of the committee and shall gather and provide information to the committee on the policies, programs, and processes of each of their respective bodies. The nonvoting, ex officio members shall not vote on decisions or recommendations by the committee.

(3) Members of the committee shall serve for terms of four years and until their successors are appointed and qualified. The Nebraska Children's Commission shall appoint the chairperson of the committee and may fill vacancies on the committee as they occur. If the Nebraska Children's Commission has terminated, such appointments shall be made and vacancies filled by the Governor with the approval of a majority of the Legislature.

Source: Laws 2013, LB530, § 3.
Effective date June 5, 2013.

43-4217 Foster Care Reimbursement Rate Committee; duties; subcommittees; reports.

(1) The Foster Care Reimbursement Rate Committee appointed pursuant to section 43-4216 shall review and make recommendations in the following areas: Foster care reimbursement rates, the statewide standardized level of care assessment, and adoption assistance payments as required by section 43-117. In making recommendations to the Legislature, the committee shall use the then-current foster care reimbursement rates as the beginning standard for setting reimbursement rates. The committee shall adjust the standard to reflect the reasonable cost of achieving measurable outcomes for all children in foster care in Nebraska. The committee shall (a) analyze then-current consumer expenditure data reflecting the costs of caring for a child in Nebraska, (b) identify and account for additional costs specific to children in foster care, and (c) apply a geographic cost-of-living adjustment for Nebraska. The reimbursement rate structure shall comply with funding requirements related to Title IV-E of the federal Social Security Act, as amended, and other federal programs as appropriate to maximize the utilization of federal funds to support foster care.

(2) The committee shall review the role and effectiveness of and make recommendations on the statewide standardized level of care assessment containing standardized criteria to determine a foster child's placement needs and to identify the appropriate foster care reimbursement rate. The committee shall review other states' assessment models and foster care reimbursement rate structures in completing the statewide standardized level of care assessment

review and the standard statewide foster care reimbursement rate structure. The committee shall ensure the statewide standardized level of care assessment and the standard statewide foster care reimbursement rate structure provide incentives to tie performance in achieving the goals of safety, maintaining family connection, permanency, stability, and well-being to reimbursements received. The committee shall review and make recommendations on assistance payments to adoptive parents as required by section 43-117. The committee shall make recommendations to ensure that changes in foster care reimbursement rates do not become a disincentive to permanency.

(3) The committee may organize subcommittees as it deems necessary. Members of the subcommittees may be members of the committee or may be appointed, with the approval of the majority of the committee, from individuals with knowledge of the subcommittee's subject matter, professional expertise to assist the subcommittee in completing its assigned responsibilities, and the ability to collaborate within the subcommittee.

(4) The Foster Care Reimbursement Rate Committee shall provide electronic reports with its recommendation to the Health and Human Services Committee of the Legislature on July 1, 2016, and every four years thereafter.

Source: Laws 2013, LB530, § 4.
Effective date June 5, 2013.

ARTICLE 43

OFFICE OF INSPECTOR GENERAL OF NEBRASKA CHILD WELFARE ACT

Section

43-4302 Legislative intent.

(1) It is the intent of the Legislature to:

(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska child welfare system;

(b) Assist in improving operations of the department and the Nebraska child welfare system;

(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the care and protection of children in the Nebraska child welfare system. Confusion of the roles, responsibilities, and accountability structures between individuals, private contractors, and agencies in the current system make it difficult to monitor and oversee the Nebraska child welfare system; and

(d) Provide a process for investigation and review to determine if individual complaints and issues of investigation and inquiry reveal a problem in the child

welfare system, not just individual cases, that necessitates legislative action for improved policies and restructuring of the child welfare system.

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of Nebraska Child Welfare Act to interfere with the duties of the Legislative Auditor or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government, except that the act does not preclude an inquiry on the sole basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogatives of the Governor to investigate, monitor, and report on the activities of the agencies, boards, bureaus, commissions, associations, societies, and institutions of the executive branch under his or her administrative direction.

Source: Laws 2012, LB821, § 9; Laws 2013, LB39, § 1.
Effective date September 6, 2013.

43-4308 Licensed child care facility, defined.

Licensed child care facility means a facility or program licensed under the Child Care Licensing Act, the Children's Residential Facilities and Placing Licensure Act, or sections 71-1901 to 71-1906.01.

Source: Laws 2012, LB821, § 15; Laws 2013, LB265, § 36.
Effective date May 26, 2013.

Cross References

Child Care Licensing Act, see section 71-1908.
Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

43-4314 Private agency, defined.

Private agency means a child welfare agency that contracts with the department or the Office of Probation Administration or contracts to provide services to another child welfare agency that contracts with the department or the Office of Probation Administration.

Source: Laws 2012, LB821, § 21; Laws 2013, LB561, § 57.
Effective date May 30, 2013.

43-4318 Office; duties; law enforcement agencies and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of the department by an employee of or person under contract with the department, a private agency, a licensed child care facility, a foster parent, or any other provider of child welfare services or which may provide a basis for discipline pursuant to the Uniform Credentialing Act; and

(b) Death or serious injury in foster homes, private agencies, child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other programs and facilities licensed by or under contract with the department or the Office of Probation Administration and death or serious injury in any case in which services are provided by the department to a child or his or her parents or any case involving an investigation under the Child Protection Act,

which case has been open for one year or less. The department and the Office of Probation Administration shall report all cases of death or serious injury of a child in a foster home, private agency, child care facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department or the Office of Probation Administration learns of such death or serious injury. For purposes of this subdivision, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

(2) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection Act. The Inspector General and his or her staff are subject to the reporting requirements of the Child Protection Act.

(3) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2012, LB821, § 25; Laws 2013, LB561, § 58.
Effective date May 30, 2013.

Cross References

Child Protection Act, see section 28-710.
Uniform Credentialing Act, see section 38-101.

43-4320 Complaints to office; form; full investigation; when; notice.

(1) Complaints to the office may be made in writing. The office shall also maintain a toll-free telephone line for complaints. A complaint shall be evaluated to determine if it alleges possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations of the department by an employee of or a person under contract with the department, a private agency,

or a licensed child care facility, a foster parent, or any other provider of child welfare services or alleges a basis for discipline pursuant to the Uniform Credentialing Act. All complaints shall be evaluated to determine whether a full investigation is warranted.

(2) The office shall not conduct a full investigation of a complaint unless:

(a) The complaint alleges misconduct, misfeasance, malfeasance, violation of a statute or of rules and regulations of the department, or a basis for discipline pursuant to the Uniform Credentialing Act;

(b) The complaint is against a person within the jurisdiction of the office; and

(c) The allegations can be independently verified through investigation.

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether it will conduct a full investigation. A complaint alleging facts which, if verified, would provide a basis for discipline under the Uniform Credentialing Act shall be referred to the appropriate credentialing board under the act.

(4) When a full investigation is opened on a private agency that contracts with the Office of Probation Administration, the Inspector General shall give notice of such investigation to the Office of Probation Administration.

Source: Laws 2012, LB821, § 27; Laws 2013, LB561, § 59.
Effective date May 30, 2013.

Cross References

Uniform Credentialing Act, see section 38-101.

43-4321 Cooperation with office; when required.

All employees of the department, all foster parents, and all owners, operators, managers, supervisors, and employees of private agencies, licensed child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other providers of child welfare services shall cooperate with the office. Cooperation includes, but is not limited to, the following:

(1) Provision of full access to and production of records and information. Providing access to and producing records and information for the office is not a violation of confidentiality provisions under any law, statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of Nebraska Child Welfare Act;

(2) Fair and honest disclosure of records and information reasonably requested by the office in the course of an investigation under the act;

(3) Encouraging employees to fully comply with reasonable requests of the office in the course of an investigation under the act;

(4) Prohibition of retaliation by owners, operators, or managers against employees for providing records or information or filing or otherwise making a complaint to the office;

(5) Not requiring employees to gain supervisory approval prior to filing a complaint with or providing records or information to the office;

(6) Provision of complete and truthful answers to questions posed by the office in the course of an investigation; and

(7) Not willfully interfering with or obstructing the investigation.

Source: Laws 2012, LB821, § 28; Laws 2013, LB561, § 60.
Effective date May 30, 2013.

43-4324 Office; access to records; subpoena; records; statement of record integrity and security; contents; treatment of records.

(1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request of the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department, a foster parent, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, or a private agency that is pertinent to an investigation. All case files, licensing files, medical records, financial and administrative records, and records required to be maintained pursuant to applicable licensing rules shall be produced for review by the office in the course of an investigation.

(2) Compliance with a request of the office includes:

(a) Production of all records requested;

(b) A diligent search to ensure that all appropriate records are included; and

(c) A continuing obligation to immediately forward to the office any relevant records received, located, or generated after the date of the request.

(3) The office shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation, and does not unnecessarily disrupt child welfare programs or services. When advance notice to a foster parent or to an administrator or his or her designee is not provided, the office investigator shall, upon arrival at the departmental office, bureau, or division, the private agency, the licensed child care facility, the juvenile detention facility, the staff secure juvenile facility, or the location of another provider of child welfare services, request that an onsite employee notify the administrator or his or her designee of the investigator's arrival.

(4) When circumstances of an investigation require, the office may make an unannounced visit to a foster home, a departmental office, bureau, or division, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, a private agency, or another provider to request records relevant to an investigation.

(5) A responsible individual or an administrator may be asked to sign a statement of record integrity and security when a record is secured by request as the result of a visit by the office, stating:

(a) That the responsible individual or the administrator has made a diligent search of the office, bureau, division, private agency, licensed child care facility, juvenile detention facility, staff secure juvenile facility, or other provider's location to determine that all appropriate records in existence at the time of the request were produced;

(b) That the responsible individual or the administrator agrees to immediately forward to the office any relevant records received, located, or generated after the visit;

(c) The persons who have had access to the records since they were secured; and

(d) Whether, to the best of the knowledge of the responsible individual or the administrator, any records were removed from or added to the record since it was secured.

(6) The office shall permit a responsible individual, an administrator, or an employee of a departmental office, bureau, or division, a private agency, a licensed child care facility, a juvenile detention facility, a staff secure juvenile facility, or another provider to make photocopies of the original records within a reasonable time in the presence of the office for purposes of creating a working record in a manner that assures confidentiality.

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, licensed child care facility, juvenile detention facility, staff secure juvenile facility, or other service provider a copy of the request, stating the date and the titles of the records received.

(8) If an original record is provided during an investigation, the office shall return the original record as soon as practical but no later than ten working days after the date of the compliance request.

(9) All investigations conducted by the office shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

Source: Laws 2012, LB821, § 31; Laws 2013, LB561, § 61.
Effective date May 30, 2013.

43-4331 Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of the Legislature and the Governor a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year. The summary provided to the committee shall be provided electronically. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committee regarding issues discovered through investigation, audits, inspections, and reviews by the office that will increase accountability and legislative oversight of the Nebraska child welfare system, improve operations of the department and the Nebraska child welfare system, or deter and identify fraud, abuse, and illegal acts. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2012, LB821, § 38; Laws 2013, LB222, § 12.
Effective date May 8, 2013.

ARTICLE 44

CHILD WELFARE SERVICES

Section

43-4406 Child welfare services; report; contents.

On or before September 15, 2012, and each September 15 thereafter, the department shall report electronically to the Health and Human Services Committee of the Legislature the following information regarding child welfare services, with respect to children served by any lead agency or the pilot project and children served by the department:

(1) The percentage of children served and the allocation of the child welfare budget, categorized by service area and by lead agency or the pilot project, including:

(a) The percentage of children served, by service area and the corresponding budget allocation; and

(b) The percentage of children served who are wards of the state and the corresponding budget allocation;

(2) The number of siblings in out-of-home care placed with siblings as of the June 30th immediately preceding the date of the report, categorized by service area and by lead agency or the pilot project;

(3) An update of the information in the report of the Children's Behavioral Health Task Force pursuant to sections 43-4001 to 43-4003, including:

(a) The number of children receiving mental health and substance abuse services annually by the Division of Behavioral Health of the department;

(b) The number of children receiving behavioral health services annually at the Hastings Regional Center;

(c) The number of state wards receiving behavioral health services as of September 1 immediately preceding the date of the report;

(d) Funding sources for children's behavioral health services for the fiscal year ending on the immediately preceding June 30;

(e) Expenditures in the immediately preceding fiscal year by the division, categorized by category of behavioral health service and by behavioral health region; and

(f) Expenditures in the immediately preceding fiscal year from the medical assistance program and CHIP as defined in section 68-969 for mental health and substance abuse services, for all children and for wards of the state;

(4) The following information as obtained for each service area and lead agency or the pilot project:

(a) Case manager education, including college degree, major, and level of education beyond a baccalaureate degree;

(b) Average caseload per case manager;

(c) Average number of case managers per child during the preceding twelve months;

(d) Average number of case managers per child for children who have been in the child welfare system for three months, for six months, for twelve months, and for eighteen months and the consecutive yearly average for children until the age of majority or permanency is attained;

(e) Monthly case manager turnover;

(f) Monthly face-to-face contacts between each case manager and the children on his or her caseload;

(g) Monthly face-to-face contacts between each case manager and the parent or parents of the children on his or her caseload;

(h) Case documentation of monthly consecutive team meetings per quarter;

(i) Case documentation of monthly consecutive parent contacts per quarter;

(j) Case documentation of monthly consecutive child contacts with case manager per quarter;

(k) Case documentation of monthly consecutive contacts between child welfare service providers and case managers per quarter;

(l) Timeliness of court reports; and

(m) Non-court-involved children, including the number of children served, the types of services requested, the specific services provided, the cost of the services provided, and the funding source;

(5) All placements in residential treatment settings made or paid for by the child welfare system, the Office of Juvenile Services, the State Department of Education or local education agencies, any lead agency or the pilot project through letters of agreement, and the medical assistance program, including, but not limited to:

(a) Child variables;

(b) Reasons for placement;

(c) The percentage of children denied medicaid-reimbursed services and denied the level of placement requested;

(d) With respect to each child in a residential treatment setting:

(i) If there was a denial of initial placement request, the length and level of each placement subsequent to denial of initial placement request and the status of each child before and immediately after, six months after, and twelve months after placement;

(ii) Funds expended and length of placements;

(iii) Number and level of placements;

(iv) Facility variables; and

(v) Identification of specific child welfare services unavailable in the child's community that, if available, could have prevented the need for residential treatment; and

(e) Identification of child welfare services unavailable in the state that, if available, could prevent out-of-state placements;

(6) From any lead agency or the pilot project, the percentage of its accounts payable to subcontracted child welfare service providers that are thirty days overdue, sixty days overdue, and ninety days overdue; and

(7) For any individual involved in the child welfare system receiving a service or a placement through the department or its agent for which referral is necessary, the date when such referral was made by the department or its agent and the date and the method by which the individual receiving the services was notified of such referral. To the extent the department becomes aware of the date when the individual receiving the referral began receiving such services, the department or its agent shall document such date.

Source: Laws 2012, LB1160, § 6; Laws 2013, LB222, § 13.
Effective date May 8, 2013.

43-4407 Service area administrator; lead agency; pilot project; annual survey; duties; reports.

(1) Each service area administrator and any lead agency or the pilot project shall annually survey children, parents, foster parents, judges, guardians ad litem, attorneys representing parents, and service providers involved with the child welfare system to monitor satisfaction with (a) adequacy of communication by the case manager, (b) response by the department, any lead agency, or the pilot project to requests and problems, (c) transportation issues, (d) medical and psychological services for children and parents, (e) visitation schedules, (f) payments, (g) support services to foster parents, (h) adequacy of information about foster children provided to foster parents, and (i) the case manager's fulfillment of his or her responsibilities. A summary of the survey shall be reported electronically to the Health and Human Services Committee of the Legislature on September 15, 2012, and each September 15 thereafter.

(2) Each service area administrator and any lead agency or the pilot project shall provide monthly reports to the child advocacy center that corresponds with the geographic location of the child regarding the services provided through the department or a lead agency or the pilot project when the child is identified as a voluntary or non-court-involved child welfare case. The monthly report shall include the plan implemented by the department, the lead agency, or the pilot project for the child and family and the status of compliance by the family with the plan. The child advocacy center shall report electronically to the Health and Human Services Committee of the Legislature on September 15, 2012, and every September 15 thereafter, or more frequently if requested by the committee.

Source: Laws 2012, LB1160, § 7; Laws 2013, LB222, § 14.
Effective date May 8, 2013.

43-4408 Department; reports; contents.

On or before September 15, 2012, and on or before each September 15 thereafter, the department shall provide electronically a report to the Health and Human Services Committee of the Legislature on the department's monitoring of any lead agencies or the pilot project, including the actions taken for contract management, financial management, revenue management, quality assurance and oversight, children's legal services, performance management, and communications. The report shall also include review of the functional capacities of each lead agency or the pilot project for (1) direct case management, (2) utilization of social work theory and evidence-based practices to include processes for insuring fidelity with evidence-based practices, (3) supervision, (4) quality assurance, (5) training, (6) subcontract management, (7) network development and management, (8) financial management, (9) financial controls, (10) utilization management, (11) community outreach, (12) coordination and planning, (13) community and stakeholder engagement, and (14) responsiveness to requests from policymakers and the Legislature. On or before December 31, 2012, the department shall provide an additional report to the committee updating the information on the pilot project contained in the report of September 15, 2012.

Source: Laws 2012, LB1160, § 8; Laws 2013, LB222, § 15.
Effective date May 8, 2013.

43-4410 Contract to provide child welfare services; evidence of financial stability and liquidity required; prohibited acts.

(1) Any entity seeking to enter into a contract with the Department of Health and Human Services to provide child welfare services shall provide evidence of financial stability and liquidity prior to executing such contract.

(2) An entity contracting with the department to provide child welfare services shall not require any subcontractor or employee of such contractor or subcontractor to sign an agreement not to compete with such contractor as a condition of subcontracting or employment.

Source: Laws 2013, LB269, § 10.
Effective date June 5, 2013.

ARTICLE 45

YOUNG ADULT VOLUNTARY SERVICES AND SUPPORT ACT

Section

43-4501 Act, how cited.

Sections 43-4501 to 43-4514 shall be known and may be cited as the Young Adult Voluntary Services and Support Act.

Source: Laws 2013, LB216, § 1.
Effective date June 5, 2013.

43-4502 Purpose of act.

The purpose of the Young Adult Voluntary Services and Support Act is to support former state wards in transitioning to adulthood, becoming self-sufficient, and creating permanent relationships. The extended services program shall at all times recognize and respect the autonomy of the young adult. Nothing in the Young Adult Voluntary Services and Support Act shall be

construed to abrogate any other rights that a person who has attained nineteen years of age may have as an adult under state law.

Source: Laws 2013, LB216, § 2.
Effective date June 5, 2013.

43-4503 Terms, defined.

For purposes of the Young Adult Voluntary Services and Support Act:

(1) Child means an individual who has not attained twenty-one years of age;

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

(3) Extended services program means the extended services and support available to a young adult under the Young Adult Voluntary Services and Support Act other than the state-extended guardianship assistance program described in subdivision (3)(b) of section 43-4514;

(4) Supervised independent living setting means an independent supervised setting, consistent with 42 U.S.C. 672(c). Supervised independent living settings shall include, but not be limited to, single or shared apartments, houses, host homes, college dormitories, or other postsecondary educational or vocational housing;

(5) Voluntary services and support agreement means a voluntary placement agreement as defined in 42 U.S.C. 672(f) between the department and a young adult as his or her own guardian; and

(6) Young adult means an individual who has attained nineteen years of age but who has not attained twenty-one years of age.

Source: Laws 2013, LB216, § 3.
Effective date June 5, 2013.

43-4504 Extended services program; availability.

The extended services program is available, on a voluntary basis, to a young adult:

(1) Who has attained at least nineteen years of age;

(2) Who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and, upon attaining nineteen years of age, was in an out-of-home placement or had been discharged to independent living; and

(3) Who is:

(a) Completing secondary education or an educational program leading to an equivalent credential;

(b) Enrolled in an institution which provides postsecondary or vocational education;

(c) Employed for at least eighty hours per month;

(d) Participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) Incapable of doing any of the activities described in subdivisions (3)(a) through (d) of this section due to a medical condition, which incapacity is supported by regularly updated information in the case plan of the young adult.

Source: Laws 2013, LB216, § 4.
Effective date June 5, 2013.

43-4505 Extended services and support; services enumerated.

Extended services and support provided under the extended services program include, but are not limited to:

(1) Medical care under the medical assistance program;

(2) Housing, placement, and support in the form of continued foster care maintenance payments which shall remain at least at the rate set immediately prior to the young adult's exit from foster care. As decided by and with the young adult, young adults may reside in a foster family home, a supervised independent living setting, an institution, or a foster care facility. Placement in an institution or a foster care facility should occur only if necessary due to a young adult's developmental level or medical condition. A young adult who is residing in a foster care facility upon leaving foster care may choose to temporarily stay until he or she is able to transition to a more age-appropriate setting. For young adults residing in a supervised independent living setting:

(a) The department may send all or part of the foster care maintenance payments directly to the young adult. This should be decided on a case-by-case basis by and with the young adult in a manner that respects the independence of the young adult; and

(b) Rules and restrictions regarding housing options should be respectful of the young adult's autonomy and developmental maturity. Specifically, safety assessments of the living arrangements shall be age-appropriate and consistent with federal guidance on a supervised setting in which the individual lives independently. A clean background check shall not be required for an individual residing in the same residence as the young adult; and

(3) Case management services that are young-adult driven. Case management shall be a continuation of the independent living transition proposal in section 43-1311.03, including a written description of additional resources that will help the young adult in creating permanent relationships and preparing for the transition to adulthood and independent living. Case management shall include the development of a case plan, developed jointly by the department and the young adult, that includes a description of the identified housing situation or living arrangement and the resources to assist the young adult in the transition from the extended services program to adulthood. The case plan shall incorporate the independent living transition proposal in section 43-1311.03. Case management shall also include, but not be limited to, documentation that assistance has been offered and provided that would help the young adult meet his or her individual goals, if such assistance is appropriate and if the young adult is eligible and consents to receive such assistance. This shall include, but not be limited to, assisting the young adult to:

(a) Obtain employment or other financial support;

(b) Obtain a government-issued identification card;

(c) Open and maintain a bank account;

(d) Obtain appropriate community resources, including health, mental health, developmental disability, and other disability services and support;

(e) When appropriate, satisfy any juvenile justice system requirements and assist with sealing the young adult's juvenile court record if the young adult is eligible under section 43-2,108.01;

(f) Complete secondary education;

(g) Apply for admission and aid for postsecondary education or vocational courses;

(h) Obtain the necessary state court findings and then apply for special immigrant juvenile status as defined in 8 U.S.C. 1101(a)(27)(J) or apply for other immigration relief that the young adult may be eligible for;

(i) Create a health care power of attorney as required by the federal Patient Protection and Affordable Care Act, Public Law 111-148;

(j) Obtain a copy of health and education records of the young adult;

(k) Apply for any public benefits or benefits that he or she may be eligible for or may be due through his or her parents or relatives, including, but not limited to, aid to dependent children, supplemental security income, social security disability insurance, social security survivors benefits, the Special Supplemental Nutrition Program for Women, Infants, and Children, the Supplemental Nutrition Assistance Program, and low-income home energy assistance programs;

(l) Maintain relationships with individuals who are important to the young adult, including searching for individuals with whom the young adult has lost contact;

(m) Access information about maternal and paternal relatives, including any siblings;

(n) Access young adult empowerment opportunities, such as Project Everlast and peer support groups; and

(o) Access pregnancy and parenting resources and services.

Source: Laws 2013, LB216, § 5.
Effective date June 5, 2013.

43-4506 Participation in extended services program; voluntary services and support agreement; contents; services provided; support worker; department; duties.

(1) If a young adult chooses to participate in the extended services program and is eligible under section 43-4504, the young adult and the department shall sign, and the young adult shall be provided a copy of, a voluntary services and support agreement that includes, at a minimum, information regarding all of the following:

(a) The requirement that the young adult continue to be eligible under section 43-4504 for the duration of the voluntary services and support agreement and any other expectations of the young adult;

(b) The services and support the young adult shall receive through the extended services program;

(c) The voluntary nature of the young adult's participation and the young adult's right to terminate the voluntary services and support agreement at any time; and

(d) Conditions that may result in the termination of the voluntary services and support agreement and the young adult's early discharge from the extended services program as described in section 43-4507.

(2) As soon as the young adult and the department sign the voluntary services and support agreement and the department determines that the young adult is eligible under section 43-4504, but not longer than forty-five days after signing

the agreement, the department shall provide services and support to the young adult in accordance with the voluntary services and support agreement.

(3) A young adult participating in the extended services program shall be assigned a support worker to provide case management services for the young adult. Support workers shall be specialized in primarily providing services for young adults in the extended services program or shall, at minimum, have specialized training in providing transition services and support to young adults.

(4) The department shall provide continued efforts at achieving permanency and creating permanent connections for a young adult participating in the extended services program.

(5) The department shall fulfill all case plan obligations consistent with 42 U.S.C. 675(1).

(6) As soon as possible after the young adult is determined eligible under section 43-4504 and signs the voluntary services and support agreement, the department shall conduct a redetermination of income eligibility for purposes of Title IV-E of the federal Social Security Act, 42 U.S.C. 672.

Source: Laws 2013, LB216, § 6.
Effective date June 5, 2013.

43-4507 Termination of voluntary services and support agreement; notice; appeal; procedure.

(1) A young adult may choose to terminate the voluntary services and support agreement and stop receiving services and support under the extended services program at any time. If a young adult chooses to terminate the voluntary services and support agreement, the department shall provide the young adult with a clear and developmentally appropriate written notice informing the young adult of the potential negative effects of terminating the voluntary services and support agreement early, the option to reenter the extended services program at any time before attaining twenty-one years of age, and the procedures for reentering the extended services program.

(2) If the department determines that the young adult is no longer eligible under section 43-4504, the department may terminate the voluntary services and support agreement and stop providing services and support to the young adult. Academic breaks in postsecondary education attendance, such as semester and seasonal breaks, and other transitions between eligibility requirements under section 43-4504, including education and employment transitions of no longer than thirty days, shall not be a basis for termination. Even if a young adult's voluntary services and support agreement has been previously terminated by either the department or the young adult, the young adult may come back into the extended services program by entering into another voluntary services and support agreement at any time, so long as he or she is eligible under section 43-4504. At least thirty days prior to the termination of the voluntary services and support agreement, the department shall provide a clear and developmentally appropriate written notice to the young adult informing the young adult of the termination of the voluntary services and support agreement and a clear and developmentally appropriate explanation of the basis for the termination. The written termination notice shall also provide information about the process for appealing the termination, information about the option to enter into another voluntary services and support agreement once the young

adult reestablishes eligibility under section 43-4504, and information about and contact information for community resources that may benefit the young adult, specifically including information regarding state programs established pursuant to 42 U.S.C. 677. The young adult may appeal the termination of the voluntary services and support agreement, and such appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2013, LB216, § 7.
Effective date June 5, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

43-4508 Department; filing with juvenile court; contents; jurisdiction of court; extended services and support file; hearing for permanency review; appointment of hearing officer.

(1) Within forty-five days after the voluntary services and support agreement is signed, the department shall file with the juvenile court a written report or petition describing the young adult's current situation, including the young adult's name, date of birth, and current address and the reasons why it is in the young adult's best interests to receive extended services and support. The department shall also provide the juvenile court with a copy of the signed voluntary services and support agreement, a copy of the case plan, and any other information the department or the young adult wants the court to consider.

(2) To ensure continuity of care and eligibility, the voluntary services and support agreement should be signed prior to and filed with the court at the last court hearing before the young adult is discharged from foster care for all young adults who choose to participate in the extended services program at that time.

(3) The court has the jurisdiction to review the voluntary services and support agreement signed by the department and the young adult under section 43-4506. Upon the filing of a report or petition under subsection (1) of this section, the court shall open an extended services and support file for the young adult for the purpose of determining whether continuing in extended services and support is in the young adult's best interests and for the purpose of conducting permanency reviews as described in subsection (5) of this section.

(4) The court shall make the best interests determination as described in subsection (3) of this section not later than one hundred eighty days after the young adult and the department enter into the voluntary services and support agreement.

(5) The court shall conduct a hearing for permanency review consistent with 42 U.S.C. 675(5)(C) as described in subsection (6) of this section regarding the voluntary services and support agreement at least once per year and at additional times at the request of the young adult, the department, or any other party to the proceeding. The juvenile court may request the appointment of a hearing officer pursuant to section 24-230 to conduct permanency review hearings. The department is not required to have legal counsel present at such hearings.

(6) The primary purpose of the permanency review is to ensure that the young adult is getting the needed services and support to help the young adult

move toward permanency and self-sufficiency. This shall include the procedural safeguards described in 42 U.S.C. 675(5)(C), including that, in all permanency reviews or hearings regarding the transition of the young adult from foster care to independent living, the court shall consult, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult and any other procedural safeguards that apply to children under nineteen years of age under existing state law. The young adult shall have a clear self-advocacy role in the permanency review in accordance with section 43-4510, and the hearing shall support the active engagement of the young adult in key decisions. Permanency reviews shall be conducted in an informal manner and, whenever possible, outside of the courtroom.

Source: Laws 2013, LB216, § 8.
Effective date June 5, 2013.

43-4509 Department; report to juvenile court; contents; court orders authorized; periodic case reviews.

(1)(a) The department shall prepare and present to the juvenile court a report, at the direction of the young adult, addressing progress made in meeting the goals in the case plan, including the independent living transition proposal, and shall propose modifications as necessary to further those goals.

(b) The court shall determine whether the department is providing the appropriate services and support as provided in the voluntary services and support agreement to carry out the case plan. If the court believes that the young adult requires additional services and support to achieve the goals documented in the case plan or under the department's policies or state or federal law, the court may order the department to take action to ensure that the young adult receives the identified services and support.

(2) The department and at least one person who is not responsible for case management, in collaboration with the young adult and additional persons identified by the young adult, shall conduct periodic case reviews consistent with 42 U.S.C. 675(5)(B) not less than once every one hundred eighty days to evaluate progress made toward meeting the goals set forth in the case plan. The department is not required to have legal counsel present at such reviews. The department shall utilize a team approach in conducting such reviews.

Source: Laws 2013, LB216, § 9.
Effective date June 5, 2013.

43-4510 Court-appointed attorney; continuation of guardian ad litem; support worker; duties; notice; court appointed special advocate volunteer.

(1) If desired by the young adult, the young adult shall be provided a court-appointed attorney who has received training appropriate to the role. The attorney's representation of the young adult shall be client-directed. The attorney shall protect the young adult's legal rights and vigorously advocate for the young adult's wishes and goals, including assisting the young adult as necessary to ensure that the young adult receives the services and support required under the Young Adult Voluntary Services and Support Act. For young adults who were appointed a guardian ad litem before the young adult attained nineteen years of age, the guardian ad litem's appointment may be continued, with consent from the young adult, but under a client-directed model of representation. Before entering into a voluntary services and support agreement and at

least sixty days prior to each permanency and case review, the support worker shall notify the young adult of his or her right to request a client-directed attorney if the young adult would like an attorney to be appointed and shall provide the young adult with a clear and developmentally appropriate written notice regarding the young adult's right to request a client-directed attorney, the benefits and role of such attorney, and the specific steps to take to request that an attorney be appointed if the young adult would like an attorney appointed.

(2) The court has discretion to appoint a court appointed special advocate volunteer or continue the appointment of a previously appointed court appointed special advocate volunteer with the consent of the young adult.

Source: Laws 2013, LB216, § 10.
Effective date June 5, 2013.

43-4511 Extended guardianship assistance; eligibility.

The department shall provide extended guardianship assistance for a young adult who is at least nineteen years of age but less than twenty-one years of age if the young adult began receiving kinship guardianship assistance pursuant to 42 U.S.C. 673 at sixteen years of age or older or the young adult received state-funded guardianship assistance in a licensed relative placement at sixteen years of age or older and the young adult meets at least one of the following conditions for eligibility:

(1) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(2) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(3) The young adult is employed for at least eighty hours per month;

(4) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(5) The young adult is incapable of doing any part of the activities in subdivisions (1) through (4) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

Source: Laws 2013, LB216, § 11.
Effective date June 5, 2013.

43-4512 Extended adoption assistance; eligibility.

The department shall provide extended adoption assistance for a young adult who is at least nineteen years of age but less than twenty-one years of age if the young adult began receiving adoption assistance at sixteen years of age or older and meets at least one of the following conditions of eligibility:

(1) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(2) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(3) The young adult is employed for at least eighty hours per month;

(4) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(5) The young adult is incapable of doing any part of the activities in subdivisions (1) through (4) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

Source: Laws 2013, LB216, § 12.
Effective date June 5, 2013.

43-4513 Young Adult Voluntary Services and Support Advisory Committee; members; terms; duties; meetings; report; contents.

(1) On or before July 1, 2013, the Nebraska Children's Commission shall appoint a Young Adult Voluntary Services and Support Advisory Committee to make recommendations to the department and the Nebraska Children's Commission for a statewide implementation plan meeting the extended services program requirements of the Young Adult Voluntary Services and Support Act. The committee shall provide a written report regarding the initial implementation of the program to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by October 1, 2013. The report shall also specifically address recommendations for maximizing and making efficient use of funding for a state-extended guardianship assistance program described in section 43-4514. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically. The Young Adult Voluntary Services and Support Advisory Committee shall meet on a biannual basis thereafter to advise the department and the Nebraska Children's Commission regarding ongoing implementation of the extended services program and shall provide a written report regarding ongoing implementation, including extended services program participation and early discharge rates and reasons obtained from the department, to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by December 15th of each year. By December 15, 2015, the committee shall develop specific recommendations for expanding to or improving outcomes for similar groups of at-risk young adults and for the adaptation or continuation of assistance under the state-extended guardianship assistance program described in section 43-4514. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

(2) The members of the Young Adult Voluntary Services and Support Advisory Committee shall include, but not be limited to, (a) representatives from all three branches of government, and the representatives from the legislative and judicial branches of government shall be nonvoting, ex officio members, (b) no less than three young adults currently or previously in foster care, which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) one or more representatives from a child welfare advocacy organization, (d) one or more representatives from a child welfare service agency, and (e) one or more representatives from an agency providing independent living services.

(3) Members of the committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the committee and may fill vacancies on the committee as they occur.

Source: Laws 2013, LB216, § 13.
Effective date June 5, 2013.

43-4514 Department; submit state plan amendment to seek federal funding; approval; effect; denial; effect; rules and regulations; references to United States Code; how construed.

(1) The department shall submit a state plan amendment by October 15, 2013, to seek federal Title IV-E funding under 42 U.S.C. 672 and 42 U.S.C. 673 for the extended services program pursuant to the Young Adult Voluntary Services and Support Act.

(2) The extended services or the state-extended guardianship assistance program under either subsection (3) or (4) of this section shall not begin prior to January 1, 2014.

(3) If the state plan amendment is approved:

(a) The department shall implement the extended services program in accordance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. 673 and 42 U.S.C. 675(8)(B) and in accordance with requirements necessary to obtain federal Title IV-E funding under 42 U.S.C. 672 and 42 U.S.C. 673. If the department does not contract with a private agency to implement the extended services program, the extended services program shall take effect within sixty days after the department receives the notice of approval of the state plan amendment. If the department contracts with a private agency to implement the extended services program, the extended services program shall take effect within ninety days after the department receives the notice of approval of the state plan amendment; and

(b) The department shall implement a state-extended guardianship assistance program. The state-extended guardianship assistance program shall not be construed to create an entitlement. Under the state-extended guardianship assistance program, a young adult (i) for whom the state has entered into a guardianship assistance agreement at sixteen years of age or older that is not with a licensed relative and (ii) who meets at least one of the conditions of eligibility under subdivisions (1) through (5) of section 43-4511, the department shall continue making guardianship assistance payments on behalf of such young adult until he or she attains twenty-one years of age to the extent possible within funds appropriated for the state-extended guardianship assistance program. It is the intent of the Legislature to appropriate four hundred thousand dollars for fiscal years 2013-14 and 2014-15 for the state-extended guardianship assistance program.

(4) If the state plan amendment is denied, the department shall implement the extended services program as a state-only pilot program within sixty days after the department receives the notice of denial. If implemented as a state-only pilot program, it is the intent of the Legislature to appropriate two million dollars for fiscal years 2013-14 and 2014-15 for such state-only pilot program. The department shall administer the state-only pilot program to serve as many eligible young adults as possible within the funds appropriated. If a state-only pilot program is established, the Young Adult Voluntary Services and Support Advisory Committee shall make recommendations to the department and the Nebraska Children's Commission regarding eligibility criteria and private or alternative funding options within thirty days after the department receives the notice of denial.

(5) Prior to January 1, 2014, the department shall adopt and promulgate rules and regulations to carry out the Young Adult Voluntary Services and Support Act.

(6) All references to the United States Code in the Young Adult Voluntary Services and Support Act refer to sections of the code as such sections existed on January 1, 2013.

Source: Laws 2013, LB216, § 14.
Effective date June 5, 2013.

CHAPTER 44
INSURANCE

Article.
3. General Provisions Relating to Insurance. 44-361.01, 44-3,159.
7. General Provisions Covering Life, Sickness, and Accident Insurance. 44-710 to 44-710.04.
10. Fraternal Insurance. 44-1090.
13. Health Carrier External Review Act. 44-1301 to 44-1318.
48. Insurers Supervision, Rehabilitation, and Liquidation. 44-4805 to 44-4828.
60. Insurers Risk-Based Capital Act. 44-6007.02 to 44-6016.
73. Health Carrier Grievance Procedure Act. 44-7306 to 44-7311.
87. Nebraska Exchange Transparency Act. 44-8701 to 44-8706.
88. Health Insurance Exchange Navigator Registration Act. 44-8801 to 44-8808.

ARTICLE 3
GENERAL PROVISIONS RELATING TO INSURANCE

Section
44-361.01. Rebates; circumventing; presumptions.
44-3,159. Health plan; self-funded employee benefit plan; assertion of contractual rights to proceeds; prohibited acts; section; applicability.

44-361.01 Rebates; circumventing; presumptions.

(1) A licensed agent whose total commissions and underwriting fees on business written upon the property, life, health, or liability of himself or herself, his or her relatives by consanguinity or affinity, and his or her employer or employees exceed ten percent of the total commissions or underwriting fees received during any one license year shall be presumed to have obtained a license or renewal thereof primarily to circumvent the enforcement of section 44-361, except that for a licensed agent soliciting crop insurance, the percentage shall be thirty percent for commissions and underwriting fees on crop insurance business.

(2) A licensed agent whose total commissions and underwriting fees on business written upon the property, life, health, or liability of himself or herself, his or her relatives by consanguinity or affinity, and his or her employer or employees exceed thirty percent of the total commissions and underwriting fees received during any one license year shall be conclusively presumed to have obtained a license or renewal thereof primarily to circumvent the enforcement of section 44-361, except that for a licensed agent soliciting crop insurance, the percentage shall be fifty percent for commissions and underwriting fees on crop insurance business.

Source: Laws 1955, c. 175, § 3, p. 503; Laws 2013, LB59, § 1.
Effective date September 6, 2013.

44-3,159 Health plan; self-funded employee benefit plan; assertion of contractual rights to proceeds; prohibited acts; section; applicability.

(1) No health plan and no self-funded employee benefit plan to the extent not preempted by federal law shall assert any contractual rights to the proceeds of

any resources purchased by or on behalf of the policyholder, subscriber, certificate holder, or enrollee, including medical payments coverage under a motor vehicle insurance policy, uninsured or underinsured motorist coverage, accident or disability income coverage, specific disease or illness coverage, or hospital indemnity or other fixed indemnity coverage.

(2) This section shall not (a) affect the coordination of benefits between health plans or self-funded employee benefit plans, (b) prevent the coordination of benefits between a health plan or self-funded employee benefit plan and medical payments coverage under a motor vehicle insurance policy if such coordination of benefits applies medical payments coverage to deductible, copayment, and coinsurance amounts after discounts provided through the health plan or self-funded employee benefit plan, or (c) prevent the application of the medical payments coverage under a motor vehicle insurance policy to items not covered by a health plan or self-funded employee benefit plan.

(3) For purposes of this section, health plan means an individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state except for (a) policies that provide coverage for specified disease or other limited-benefit coverage or hospital indemnity or other fixed indemnity coverage or (b) self-funded employee benefit plans to the extent preempted by federal law.

Source: Laws 2013, LB479, § 1.
Effective date September 6, 2013.

ARTICLE 7

GENERAL PROVISIONS COVERING LIFE, SICKNESS, AND ACCIDENT INSURANCE

Section

44-710 Sickness and accident insurance policy; form; approval; exception; premium rates and classification of risks; filing requirements.

(1) Except as otherwise provided by the Director of Insurance and subsection (2) of this section, no policy of sickness and accident insurance shall be delivered or issued for delivery in this state, nor shall any endorsement, rider, or application which becomes a part of any such policy be used, until a copy of the form and of the premium rates and of the classification of risks pertaining thereto has been filed with the Director of Insurance. No policy, endorsement, rider, or application shall be used until the expiration of thirty days after the form has been received by the director unless the director gives his or her written approval thereto prior to the expiration of the thirty-day period. The thirty-day period may be extended by the director for an additional period not to exceed thirty days. Notice of such extension shall be sent to the insurer involved. The director shall notify in writing the insurer which has filed any such form if it contains benefits that are unreasonable in relation to the premium charged or any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state, specifying the reasons for his or her

opinion, and it shall thereafter be unlawful for such insurer to use such form in this state. In such notice, the director shall state that a hearing will be granted within thirty days upon written request of the insurer. In all other cases the director shall give his or her approval. The decision of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) No sickness and accident insurance policy subject to the federal Patient Protection and Affordable Care Act, Public Law 111-148, shall be delivered or issued for delivery in this state, including any policy or certificate of sickness and accident insurance issued to or for associations not domiciled in this state other than a certificate issued to an employee under an employee benefit plan of an employer headquartered in another state where the policy is lawfully issued in that state, nor shall any endorsement, rider, certificate, or application which becomes a part of any such policy be used until a copy of the form and of the premium rates and of the classification of risks pertaining thereto has been filed with and approved by the Director of Insurance. No policy, endorsement, rider, or application shall be used until the expiration of thirty days after the form has been received by the director unless the director gives his or her written approval thereto prior to the expiration of the thirty-day period. The thirty-day period may be extended by the director for an additional period not to exceed thirty days. Notice of such extension shall be sent to the insurer involved. The director shall notify in writing the insurer which has filed any such form if it contains benefits that are unreasonable in relation to the premium charged or any provision which is unjust, unfair, inequitable, misleading, or contrary to the law of this state, specifying the reasons for his or her opinion, and it shall thereafter be unlawful for such insurer to use such form in this state. In such notice, the director shall state that a hearing will be granted within thirty days upon written request of the insurer. In all other cases the director shall give his or her approval. The decision of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1947, c. 164, § 2(1), p. 452; Laws 1951, c. 143, § 1, p. 581; Laws 1959, c. 209, § 1, p. 728; Laws 1969, c. 359, § 21, p. 1276; Laws 1989, LB 6, § 5; Laws 1989, LB 92, § 130; Laws 2013, LB336, § 1.
Effective date September 6, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

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 an intellectual disability or a physical disability 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; Laws 2013, LB23, § 11.
Effective date September 6, 2013.

44-710.04 Sickness and accident insurance; permissive provisions; standard policy form; requirements.

Except as provided in sections 44-710.05 and 44-787, no policy of sickness and accident insurance delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the provisions appear in this section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Director of Insurance which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this section or, at the

option of the insurer, by such appropriate individual or group captions or subcaptions as the Director of Insurance may approve.

(1) A provision as follows: CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his or her occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his or her occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change of occupation.

(2) A provision as follows: MISSTATEMENT OF AGE: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) Except as provided in subdivision (6) of this section, a provision as follows: OTHER INSURANCE IN THIS INSURER: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of $..... (insert maximum limit of indemnity or indemnities), the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his or her estate; or in lieu thereof: Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his or her beneficiary, or his or her estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) Except as provided in subdivision (6) of this section, a provision as follows: INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision-of-service basis or on an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense-incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision-of-service basis, the like

amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage. If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase ..... EXPENSE-INCURRED BENEFITS. The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and by hospital or medical service organizations and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(5) Except as provided in subdivision (6) of this section, a provision as follows: INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense-incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined. If the foregoing policy provision is included in a policy which also contains the next preceding policy provision, there shall be added to the caption of the foregoing provision the phrase ..... OTHER BENEFITS. The insurer may, at its option, include in this provision a definition of other valid coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada and to any other coverage the inclusion of which may be approved by the Director of Insurance. In the absence of such definition such term shall not include group insurance or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as other valid coverage.

(6) In lieu of the provisions set forth in subdivisions (3) through (5) of this section but subject to section 44-3,159, the insurer may at its option include a provision entitled COORDINATION OF BENEFITS which provides for nonduplication and coordination between two or more coverages based on rules and regulations adopted and promulgated by the director.

(7) A provision as follows: RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his or her average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time. The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age fifty or (b) in the case of a policy issued after age forty-four for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of valid loss-of-time coverage, approved as to form by the Director of Insurance, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada or to any other coverage the inclusion of which may be approved by the Director of Insurance or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employers liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

(8) A provision as follows: UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(9) A provision as follows: CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured which shall be effective only if mailed by certified or registered mail to the named insured at his or her last-known address, as shown by the records of the insurer, at least thirty days prior to the effective date of cancellation, except that cancellation due to failure to pay the premium or in cases of fraud or misrepresentation shall not require that such notice be given at least thirty days prior to cancellation. Subject to any provisions in the policy or a grace period, cancellation for failure to pay a premium shall be effective as of midnight of the last day for which the premium has been paid. In cases of fraud or misrepresentation, coverage shall be canceled upon the date of the notice or any later date

designated by the insurer. After the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(10) A provision as follows: ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(11) A provision as follows: INTOXICANTS AND NARCOTICS: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

Source: Laws 1957, c. 188, § 5, p. 650; Laws 1985, LB 76, § 1; Laws 1989, LB 92, § 134; Laws 1997, LB 55, § 2; Laws 2011, LB72, § 4; Laws 2013, LB479, § 2.
Effective date September 6, 2013.

ARTICLE 10

FRATERNAL INSURANCE

Section
44-1090. Benefit contract; contents.

44-1090 Benefit contract; contents.

(1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided by the contract. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this subsection shall be void.

(2) Any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate shall bind the owner and the beneficiaries and shall govern and control the benefit contract in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance of the contract.

(3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and

certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of such deficiency as ascertained by its board and that if the payment is not made either (a) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates or (b) in lieu of or in combination with subdivision (a) of this subsection, the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(5) A domestic society may assess owners as described in subsection (4) of this section only after such assessment is filed with the Director of Insurance and approved by him or her. In the case of a foreign or alien society, notice of an assessment shall be provided to the director at least thirty days before the effective date of the assessment. The director shall have the authority to prohibit any foreign or alien society that has assessed its owners from issuing any new contracts of insurance in this state.

(6) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(7) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the Director of Insurance in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from September 6, 1985, shall meet the standard contract provision requirements not inconsistent with sections 44-1072 to 44-10,109 for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(8) Benefit contracts issued on the lives of persons younger than the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer and may provide in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith. Ownership rights prior to such transfer shall be specified in the certificate.

(9) A society may specify the terms and conditions on which benefit contracts may be assigned.

Source: Laws 1985, LB 508, § 19; Laws 2013, LB426, § 1.
Effective date September 6, 2013.

ARTICLE 13

HEALTH CARRIER EXTERNAL REVIEW ACT

Section

44-1301 Act, how cited.

Sections 44-1301 to 44-1318 shall be known and may be cited as the Health Carrier External Review Act.

Source: Laws 2013, LB147, § 1.
Effective date September 6, 2013.

44-1302 Purpose of act.

The purpose of the Health Carrier External Review Act is to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination.

Source: Laws 2013, LB147, § 2.
Effective date September 6, 2013.

44-1303 Terms, defined.

For purposes of the Health Carrier External Review Act:

(1) Adverse determination means a determination by a health carrier or its designee utilization review organization that an admission, the availability of care, a continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service or payment for the service is therefor denied, reduced, or terminated;

(2) Ambulatory review means the utilization review of health care services performed or provided in an outpatient setting;

(3) Authorized representative means:

(a) A person to whom a covered person has given express written consent to represent the covered person in an external review;

(b) A person authorized by law to provide substituted consent for a covered person; or

(c) A family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent;

(4) Benefits or covered benefits means those health care services to which a covered person is entitled under the terms of a health benefit plan;

(5) Best evidence means evidence based on:

(a) Randomized clinical trials;

(b) If randomized clinical trials are not available, cohort studies or case-control studies;

(c) If the criteria described in subdivisions (5)(a) and (b) of this section are not available, case-series; or

(d) If the criteria described in subdivisions (5)(a), (b), and (c) of this section are not available, expert opinions;

(6) Case-control study means a retrospective evaluation of two groups of patients with different outcomes to determine which specific interventions the patients received;

(7) Case management means a coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions;

(8) Case-series means an evaluation of a series of patients with a particular outcome, without the use of a control group;

(9) Certification means a determination by a health carrier or its designee utilization review organization that an admission, the availability of care, a continued stay, or other health care service has been reviewed and, based upon the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness;

(10) Clinical review criteria means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services;

(11) Cohort study means a prospective evaluation of two groups of patients with only one group of patients receiving a specific intervention;

(12) Concurrent review means a utilization review conducted during a patient's hospital stay or course of treatment;

(13) Covered person means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan;

(14) Director means the Director of Insurance;

(15) Discharge planning means the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility;

(16) Disclose means to release, transfer, or otherwise divulge protected health information to any person other than the individual who is the subject of the protected health information;

(17) Emergency medical condition means the sudden and, at the time, unexpected onset of a health condition or illness that requires immediate medical attention if failure to provide such medical attention would result in a serious impairment to bodily functions or serious dysfunction of a bodily organ or part or would place the person's health in serious jeopardy;

(18) Emergency services means health care items and services furnished or required to evaluate and treat an emergency medical condition;

(19) Evidence-based standard means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of an individual patient;

(20) Expert opinion means a belief or an interpretation by a specialist with experience in a specific area about the scientific evidence pertaining to a particular service, intervention, or therapy;

(21) Facility means an institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings;

(22) Final adverse determination means an adverse determination involving a covered benefit that has been upheld by a health carrier, or its designee utilization review organization, at the completion of the health carrier's internal grievance process procedures as set forth in the Health Carrier Grievance Procedure Act;

(23) Health benefit plan means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services;

(24) Health care professional means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law;

(25) Health care provider or provider means a health care professional or a facility;

(26) Health care services means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease;

(27) Health carrier means an entity subject to the insurance laws 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 health care services;

(28) Health information means information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to:

(a) The past, present, or future physical, mental, or behavioral health or condition of an individual or a member of the individual's family;

(b) The provision of health care services to an individual; or

(c) Payment for the provision of health care services to an individual;

(29) Independent review organization means an entity that conducts independent external reviews of adverse determinations and final adverse determinations;

(30) Medical or scientific evidence means evidence found in the following sources:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's United States National Library of Medicine for indexing in Index Medicus, known as Medline, and Elsevier Science Ltd. for indexing in Excerpta Medica, known as Embase;

(c) Medical journals recognized by the Secretary of Health and Human Services under section 1861(t)(2) of the federal Social Security Act;

(d) The following standard reference compendia:

(i) The AHFS Drug Information;

(ii) Drug Facts and Comparisons;

(iii) The American Dental Association Guide to Dental Therapeutics; and

(iv) The United States Pharmacopoeia Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including:

(i) The federal Agency for Healthcare Research and Quality of the United States Department of Health and Human Services;

(ii) The National Institutes of Health;

(iii) The National Cancer Institute;

(iv) The National Academy of Sciences;

(v) The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services;

(vi) The federal Food and Drug Administration; and

(vii) Any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health care services; or

(f) Any other medical or scientific evidence that is comparable to the sources listed in subdivisions (30)(a) through (e) of this section;

(31) Prospective review means a utilization review conducted prior to an admission or a course of treatment;

(32) Protected health information means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual;

(33) Randomized clinical trial means a controlled, prospective study of patients that have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time;

(34) Retrospective review means a review of medical necessity conducted after health care services have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment;

(35) Second opinion means an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the clinical necessity and appropriateness of the initial proposed health care service;

(36) Utilization review means a set of formal techniques designed to monitor the use or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review; and

(37) Utilization review organization means an entity that conducts a utilization review, other than a health carrier performing a review for its own health benefit plans.

Source: Laws 2013, LB147, § 3.
Effective date September 6, 2013.

44-1304 Applicability of act.

(1) Except as provided in subsection (2) of this section, the Health Carrier External Review Act shall apply to all health carriers.

(2)(a) The act shall not apply to a policy or certificate that provides coverage for:

(i) A specified disease, specified accident, or accident-only coverage;

(ii) Credit;

(iii) Dental;

(iv) Disability income;

(v) Hospital indemnity;

(vi) Long-term care insurance as defined in section 44-4509;

(vii) Vision care; or

(viii) Any other limited supplemental benefit.

(b) The act shall not apply to:

(i) A medicare supplement policy of insurance as defined in section 44-3602;

(ii) Coverage under a plan through medicare, medicaid, or the Federal Employees Health Benefits Program;

(iii) Any coverage issued under Chapter 55 of Title 10 of the United States Code and any coverage issued as a supplement to that coverage;

(iv) Any coverage issued as supplemental to liability insurance;

(v) Workers' compensation or similar insurance;

(vi) Automobile medical-payment insurance; or

(vii) Any insurance under which benefits are payable with or without regard to fault, whether written on a group blanket or individual basis.

Source: Laws 2013, LB147, § 4.
Effective date September 6, 2013.

44-1305 Health carrier; covered person; notification; when; written notice; contents; health carrier; duties.

(1)(a) A health carrier shall notify the covered person in writing of the covered person's right to request an external review to be conducted pursuant to section 44-1308, 44-1309, or 44-1310 and include the appropriate statements and information as set forth in subsection (2) of this section at the same time that the health carrier sends written notice of:

(i) An adverse determination upon completion of the health carrier's utilization review process set forth in the Utilization Review Act; and

(ii) A final adverse determination.

(b) As part of the written notice required under subdivision (1)(a) of this section, a health carrier shall include the following, or substantially equivalent, language: We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or effectiveness of the health care service or treatment you requested by submitting a request for external review to the Director of Insurance (insert address and telephone number of the office of the director).

(c) The director may prescribe by rule and regulation the form and content of the notice required under this section.

(2)(a) The health carrier shall include in the notice required under subsection (1) of this section:

(i) For a notice related to an adverse determination, a statement informing the covered person that:

(A) If the covered person has a medical condition in which the timeframe for completion of an expedited review of a grievance involving an adverse determination as set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review to be conducted pursuant to section 44-1309 or 44-1310 if the adverse determination involves a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational

and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated, at the same time the covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311, but that the independent review organization assigned to conduct the expedited external review will determine whether the covered person shall be required to complete the expedited review of the grievance prior to conducting the expedited external review; and

(B) The covered person or the covered person's authorized representative may file a grievance under the health carrier's internal grievance process as set forth in section 44-7308, but if the health carrier has not issued a written decision to the covered person or his or her authorized representative within thirty days following the date that the covered person or his or her authorized representative files the grievance with the health carrier and the covered person or his or her authorized representative has not requested or agreed to a delay, the covered person or his or her authorized representative may file a request for external review pursuant to section 44-1306 and shall be considered to have exhausted the health carrier's internal grievance process for purposes of section 44-1307; and

(ii) For a notice related to a final adverse determination, a statement informing the covered person that:

(A) If the covered person has a medical condition in which the timeframe for completion of a standard external review pursuant to section 44-1308 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review pursuant to section 44-1309; or

(B) If the final adverse determination concerns:

(I) An admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility, the covered person or the covered person's authorized representative may request an expedited external review pursuant to section 44-1309; or

(II) A denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational, the covered person or the covered person's authorized representative may file a request for a standard external review to be conducted pursuant to section 44-1310 or if the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated, the covered person or his or her authorized representative may request an expedited external review to be conducted under section 44-1310.

(b) In addition to the information to be provided pursuant to subdivision (2)(a) of this section, the health carrier shall include a copy of the description of both the standard and expedited external review procedures that the health carrier is required to provide pursuant to section 44-1317 and shall highlight the provisions in the external review procedures that give the covered person or

the covered person's authorized representative the opportunity to submit additional information and include any forms used to process an external review.

(c) As part of any forms provided under subdivision (2)(b) of this section, the health carrier shall include an authorization form or other document approved by the director that complies with the requirements of 45 C.F.R. 164.508, by which the covered person, for purposes of conducting an external review under the Health Carrier External Review Act, authorizes the health carrier and the covered person's treating health care provider to disclose protected health information, including medical records, concerning the covered person that are pertinent to the external review.

Source: Laws 2013, LB147, § 5.
Effective date September 6, 2013.

Cross References

Utilization Review Act, see section 44-5416.

44-1306 Request for external review.

(1)(a) Except for a request for an expedited external review as set forth in section 44-1309, all requests for external review shall be made in writing to the director.

(b) The director may prescribe by rule and regulation the form and content of external review requests required to be submitted under this section.

(2) A covered person or the covered person's authorized representative may make a request for an external review of an adverse determination or final adverse determination.

Source: Laws 2013, LB147, § 6.
Effective date September 6, 2013.

44-1307 Request for external review; exhaustion of internal grievance process; request for expedited external review of adverse determination; independent review organization; duties.

(1)(a) Except as provided in subsection (2) of this section, a request for an external review pursuant to section 44-1308, 44-1309, or 44-1310 shall not be made until the covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(b) A covered person shall be considered to have exhausted the health carrier's internal grievance process for purposes of this section if the covered person or the covered person's authorized representative:

(i) Has filed a grievance involving an adverse determination pursuant to section 44-7308; and

(ii) Except to the extent that the covered person or the covered person's authorized representative requested or agreed to a delay, has not received a written decision on the grievance from the health carrier within thirty days following the date that the covered person or the covered person's authorized representative filed the grievance with the health carrier.

(c) Notwithstanding subdivision (1)(b) of this section, a covered person or the covered person's authorized representative may not make a request for an external review of an adverse determination involving a retrospective review

determination made pursuant to the Utilization Review Act until the covered person has exhausted the health carrier's internal grievance process.

(2)(a)(i) At the same time that a covered person or the covered person's authorized representative files a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311, the covered person or his or her authorized representative may file a request for an expedited external review of the adverse determination:

(A) Under section 44-1309 if the covered person has a medical condition in which the timeframe for completion of an expedited review of the grievance involving an adverse determination set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(B) Under section 44-1310 if the adverse determination involves a denial of coverage based upon a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated.

(ii) Upon receipt of a request for an expedited external review under subdivision (2)(a)(i) of this section, the independent review organization conducting the external review in accordance with the provisions of section 44-1309 or 44-1310 shall determine whether the covered person shall be required to complete the expedited grievance review process set forth in section 44-7311 before it conducts the expedited external review.

(iii) Upon a determination made pursuant to subdivision (2)(a)(ii) of this section that the covered person must first complete the expedited grievance review process set forth in section 44-7311, the independent review organization shall immediately notify the covered person and, if applicable, the covered person's authorized representative of such determination and the fact that it will not proceed with the expedited external review set forth in section 44-1309 until completion of the expedited grievance review process and the covered person's grievance at the completion of the expedited grievance review process remains unresolved.

(b) A request for an external review of an adverse determination may be made before the covered person has exhausted the health carrier's internal grievance procedures as set forth in section 44-7308 if the health carrier agrees to waive the exhaustion requirement.

(3) If the requirement to exhaust the health carrier's internal grievance procedures is waived under subdivision (2)(b) of this section, the covered person or the covered person's authorized representative may file a request in writing for a standard external review as set forth in section 44-1308 or 44-1310.

Source: Laws 2013, LB147, § 7.
Effective date September 6, 2013.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.
Utilization Review Act, see section 44-5416.

44-1308 Request for external review; filing; director; duties; health carrier; duties; preliminary review; contents; director; powers; notice of initial determination; contents; independent review organization; powers; duties; decision; notice; contents.

(1)(a) Within four months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to section 44-1305, a covered person or the covered person's authorized representative may file a request for an external review with the director.

(b) Within one business day after the date of receipt of a request for an external review pursuant to subdivision (1)(a) of this section, the director shall send a copy of the request to the health carrier.

(2) Within five business days following the date of receipt of the copy of the external review request from the director under subdivision (1)(b) of this section, the health carrier shall complete a preliminary review of the request to determine whether:

(a) The individual is or was a covered person in the health benefit plan at the time that the health care service was requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time that the health care service was provided;

(b) The health care service that is the subject of the adverse determination or the final adverse determination is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness;

(c) The covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 44-1307; and

(d) The covered person has provided all the information and forms required to process an external review, including the release form provided under subsection (2) of section 44-1305.

(3)(a) Within one business day after completion of the preliminary review, the health carrier shall notify the director and covered person and, if applicable, the covered person's authorized representative, in writing whether:

(i) The request is complete; and

(ii) The request is eligible for external review.

(b) If the request:

(i) Is not complete, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative and the director in writing and include in the notice what information or materials are needed to make the request complete; or

(ii) Is not eligible for external review, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative and the director in writing and include in the notice the reasons for its ineligibility.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(ii) The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subsection (2) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (3)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(4)(a) Whenever the director receives a notice that a request is eligible for external review following the preliminary review conducted pursuant to subsection (3) of this section, the director shall, within one business day after the date of receipt of the notice:

(i) Assign an independent review organization from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 to conduct the external review and notify the health carrier of the name of the assigned independent review organization; and

(ii) Notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review.

(b) In reaching a decision, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Utilization Review Act or the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(c) The director shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or his or her authorized representative may submit in writing to the assigned independent review organization within five business days following the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section additional information that the independent review organization shall consider when conducting the external review. The independent review organization is not required to but may accept and consider additional information submitted after five business days.

(5)(a) Within five business days after the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse determination or final adverse determination.

(b) Except as provided in subdivision (5)(c) of this section, failure by the health carrier or its utilization review organization to provide the documents

and information within the time specified in subdivision (5)(a) of this section shall not delay the conduct of the external review.

(c)(i) If the health carrier or its utilization review organization fails to provide the documents and information within the time specified in subdivision (5)(a) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(ii) Within one business day after making the decision under subdivision (5)(c)(i) of this section, the independent review organization shall notify the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director.

(6)(a) The assigned independent review organization shall review all of the information and documents received pursuant to subsection (5) of this section and any other information submitted in writing to the independent review organization by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section.

(b) Upon receipt of any information submitted by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section, the assigned independent review organization shall forward the information to the health carrier within one business day.

(7)(a) Upon receipt of the information, if any, required to be forwarded pursuant to subdivision (6)(b) of this section, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health carrier of its adverse determination or final adverse determination pursuant to subdivision (7)(a) of this section shall not delay or terminate the external review.

(c) The external review may only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the health care service that is the subject of the adverse determination or final adverse determination.

(d)(i) Within one business day after making the decision to reverse its adverse determination or final adverse determination as provided in subdivision (7)(c) of this section, the health carrier shall notify the covered person and, if applicable, the covered person's authorized representative, the assigned independent review organization, and the director in writing of its decision.

(ii) The assigned independent review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to subdivision (7)(d)(i) of this section.

(8) In addition to the documents and information provided pursuant to subsection (5) of this section, the assigned independent review organization, to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

(a) The covered person's medical records;

(b) The attending health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, or the covered person's treating provider;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(e) The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, or associations;

(f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization; and

(g) The opinion of the independent review organization's clinical reviewer or reviewers after considering subdivisions (8)(a) through (f) of this section to the extent that the information or documents are available and the clinical reviewer or reviewers consider it appropriate.

(9)(a) Within forty-five days after the date of receipt of the request for an external review, the assigned independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or the final adverse determination to the covered person, if applicable, the covered person's authorized representative, the health carrier, and the director.

(b) The independent review organization shall include in the notice sent pursuant to subdivision (9)(a) of this section:

(i) A general description of the reason for the request for external review;

(ii) The date that the independent review organization received the assignment from the director to conduct the external review;

(iii) The date that the external review was conducted;

(iv) The date of its decision;

(v) The principal reason or reasons for its decision, including what applicable, if any, evidence-based standards were a basis for its decision;

(vi) The rationale for its decision; and

(vii) References to the evidence or documentation, including the evidence-based standards, considered in reaching its decision.

(c) Upon receipt of a notice of a decision pursuant to subdivision (9)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(10) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 8.
Effective date September 6, 2013.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.
Utilization Review Act, see section 44-5416.

44-1309 Request for expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; expedited external review; independent review organization; powers; duties; decision; notice; contents.

(1) Except as provided in subsection (6) of this section, a covered person or the covered person's authorized representative may make a request for an expedited external review with the director at the time that the covered person receives:

(a) An adverse determination if:

(i) The adverse determination involves a medical condition of the covered person for which the timeframe for completion of an expedited internal review of a grievance involving an adverse determination set forth in section 44-7311 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; and

(ii) The covered person or the covered person's authorized representative has filed a request for an expedited review of a grievance involving an adverse determination as set forth in section 44-7311; or

(b) A final adverse determination:

(i) If the covered person has a medical condition in which the timeframe for completion of a standard external review pursuant to section 44-1308 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(ii) If the final adverse determination concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility.

(2)(a) Upon receipt of a request for an expedited external review, the director shall immediately send a copy of the request to the health carrier.

(b) Immediately upon receipt of the request pursuant to subdivision (2)(a) of this section, the health carrier shall determine whether the request meets the reviewability requirements set forth in subsection (2) of section 44-1308. The health carrier shall immediately notify the director and the covered person and, if applicable, the covered person's authorized representative of its eligibility determination.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(ii) The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that an external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subsection (2) of section 44-1308 notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (2)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(e) Upon receipt of the notice that the request meets the reviewability requirements, the director shall immediately assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312. The director shall immediately notify the health carrier of the name of the assigned independent review organization.

(f) In reaching a decision in accordance with subsection (5) of this section, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Health Carrier Grievance Procedure Act or the Utilization Review Act.

(3) Upon receipt of the notice from the director of the name of the independent review organization assigned to conduct the expedited external review pursuant to subdivision (2)(e) of this section, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(4) In addition to the documents and information provided or transmitted pursuant to subsection (3) of this section, the assigned independent review organization, to the extent that the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

(a) The covered person's pertinent medical records;

(b) The attending health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, or the covered person's treating provider;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(e) The most appropriate practice guidelines, which shall include evidence-based standards, and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, or associations;

(f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization in making adverse determinations; and

(g) The opinion of the independent review organization's clinical reviewer or reviewers after considering subdivisions (4)(a) through (f) of this section to the extent that the information and documents are available and the clinical reviewer or reviewers consider it appropriate.

(5)(a) As expeditiously as the covered person's medical condition or circumstances requires, but in no event more than seventy-two hours after the date of receipt of the request for an expedited external review that meets the reviewability requirements set forth in subsection (2) of section 44-1308, the assigned independent review organization shall:

(i) Make a decision to uphold or reverse the adverse determination or final adverse determination; and

(ii) Notify the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director of the decision.

(b) If the notice provided pursuant to subdivision (5)(a) of this section was not in writing, within forty-eight hours after the date of providing that notice, the assigned independent review organization shall:

(i) Provide written confirmation of the decision to the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director; and

(ii) Include the information set forth in subdivision (9)(b) of section 44-1308.

(c) Upon receipt of the notice of a decision pursuant to subdivision (5)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(6) An expedited external review may not be provided for retrospective adverse or final adverse determinations.

(7) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 9.
Effective date September 6, 2013.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.
Utilization Review Act, see section 44-5416.

44-1310 Review of denial of coverage for service or coverage determined experimental or investigational; external review; expedited external review; director; duties; health carrier; duties; notice of initial determination; contents; appeal; clinical reviewer; duties; independent review organization; powers; duties; decision; notice; contents.

(1)(a) Within four months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to section 44-1305 that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational, a covered person or the covered person's authorized representative may file a request for external review with the director.

(b)(i) A covered person or the covered person's authorized representative may make an oral request for an expedited external review of the adverse determination or final adverse determination pursuant to subdivision (1)(a) of this

section if the covered person's treating physician certifies, in writing, that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated.

(ii) Upon receipt of a request for an expedited external review, the director shall immediately notify the health carrier.

(iii)(A) Upon notice of the request for expedited external review, the health carrier shall immediately determine whether the request meets the reviewability requirements of subdivision (2)(b) of this section. The health carrier shall immediately notify the director and the covered person and, if applicable, the covered person's authorized representative of its eligibility determination.

(B) The director may specify the form for the health carrier's notice of initial determination under subdivision (1)(b)(iii)(A) of this section and any supporting information to be included in the notice.

(C) The notice of initial determination under subdivision (1)(b)(iii)(A) of this section shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(iv)(A) The director may determine that a request is eligible for external review under subdivision (2)(b) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(B) In making a determination under subdivision (1)(b)(iii)(A) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(v) Upon receipt of the notice that the expedited external review request meets the reviewability requirements of subdivision (2)(b) of this section, the director shall immediately assign an independent review organization to review the expedited request from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 and notify the health carrier of the name of the assigned independent review organization.

(vi) At the time the health carrier receives the notice of the assigned independent review organization pursuant to subdivision (1)(b)(v) of this section, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the adverse determination or final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(2)(a) Except for a request for an expedited external review made pursuant to subdivision (1)(b) of this section, within one business day after the date of receipt of the request the director receives a request for an external review, the director shall notify the health carrier.

(b) Within five business days following the date of receipt of the notice sent pursuant to subdivision (2)(a) of this section, the health carrier shall conduct and complete a preliminary review of the request to determine whether:

(i) The individual is or was a covered person in the health benefit plan at the time that the health care service or treatment was recommended or requested

or, in the case of a retrospective review, was a covered person in the health benefit plan at the time that the health care service or treatment was provided;

(ii) The recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination:

(A) Is a covered benefit under the covered person's health benefit plan except for the health carrier's determination that the service or treatment is experimental or investigational for a particular medical condition; and

(B) Is not explicitly listed as an excluded benefit under the covered person's health benefit plan with the health carrier;

(iii) The covered person's treating physician has certified that one of the following situations is applicable:

(A) Standard health care services or treatments have not been effective in improving the condition of the covered person;

(B) Standard health care services or treatments are not medically appropriate for the covered person; or

(C) There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the recommended or requested health care service or treatment described in subdivision (2)(b)(iv) of this section;

(iv) The covered person's treating physician:

(A) Has recommended a health care service or treatment that the physician certifies, in writing, is likely to be more beneficial to the covered person, in the physician's opinion, than any available standard health care service or treatment; or

(B) Who is a licensed, board-certified or board-eligible physician qualified to practice in the area of medicine appropriate to treat the covered person's condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment requested by the covered person that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person than any available standard health care service or treatment;

(v) The covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 44-1307; and

(vi) The covered person has provided all the information and forms required by the director that are necessary to process an external review, including the release form provided under subsection (2) of section 44-1305.

(3)(a) Within one business day after completion of the preliminary review, the health carrier shall notify the director and the covered person and, if applicable, the covered person's authorized representative in writing whether the request is complete and the request is eligible for external review.

(b) If the request:

(i) Is not complete, the health carrier shall inform, in writing, the director and the covered person and, if applicable, the covered person's authorized representative and include in the notice what information or materials are needed to make the request complete; or

(ii) Is not eligible for external review, the health carrier shall inform the covered person, the covered person's authorized representative, if applicable, and the director in writing and include in the notice the reasons for its ineligibility.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under subdivision (3)(b) of this section and any supporting information to be included in the notice.

(ii) The notice of initial determination provided under subdivision (3)(b) of this section shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subdivision (2)(b) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (3)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(e) Whenever a request for external review is determined eligible for external review, the health carrier shall notify the director and the covered person and, if applicable, the covered person's authorized representative.

(4)(a) Within one business day after the receipt of the notice from the health carrier that the external review request is eligible for external review pursuant to subdivision (1)(b)(iv) of this section or subdivision (3)(e) of this section, the director shall:

(i) Assign an independent review organization to conduct the external review from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 and notify the health carrier of the name of the assigned independent review organization; and

(ii) Notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review.

(b) The director shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or the covered person's authorized representative may submit in writing to the assigned independent review organization within five business days following the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section additional information that the independent review organization shall consider when conducting the external review. The independent review organization may accept and consider additional information submitted after five business days.

(c) Within one business day after the receipt of the notice of assignment to conduct the external review pursuant to subdivision (4)(a) of this section, the assigned independent review organization shall:

(i) Select one or more clinical reviewers, as it determines is appropriate, pursuant to subdivision (4)(d) of this section to conduct the external review; and

(ii) Based upon the opinion of the clinical reviewer, or opinions if more than one clinical reviewer has been selected to conduct the external review, make a decision to uphold or reverse the adverse determination or final adverse determination.

(d)(i) In selecting clinical reviewers pursuant to subdivision (4)(c)(i) of this section, the assigned independent review organization shall select physicians or other health care professionals who meet the minimum qualifications described in section 44-1313 and, through clinical experience in the past three years, are experts in the treatment of the covered person's condition and knowledgeable about the recommended or requested health care service or treatment.

(ii) Neither the covered person, the covered person's authorized representative, if applicable, nor the health carrier shall choose or control the choice of the physicians or other health care professionals to be selected to conduct the external review.

(e) In accordance with subsection (8) of this section, each clinical reviewer shall provide a written opinion to the assigned independent review organization on whether the recommended or requested health care service or treatment should be covered.

(f) In reaching an opinion, a clinical reviewer is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Utilization Review Act or the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(5)(a) Within five business days after the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse determination or the final adverse determination.

(b) Except as provided in subdivision (5)(c) of this section, failure by the health carrier or its designee utilization review organization to provide the documents and information within the time specified in subdivision (5)(a) of this section shall not delay the conduct of the external review.

(c)(i) If the health carrier or its designee utilization review organization has failed to provide the documents and information within the time specified in subdivision (5)(a) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(ii) Immediately upon making the decision under subdivision (5)(c)(i) of this section, the independent review organization shall notify the covered person, the covered person's authorized representative, if applicable, the health carrier, and the director.

(6)(a) Each clinical reviewer selected pursuant to subsection (4) of this section shall review all of the information and documents received pursuant to subsection (5) of this section and any other information submitted in writing by the covered person or the covered person's authorized representative pursuant to subdivision (4)(b) of this section.

(b) Upon receipt of any information submitted by the covered person or the covered person's authorized representative pursuant to subdivision (4)(b) of this section, within one business day after the receipt of the information, the

assigned independent review organization shall forward the information to the health carrier.

(7)(a) Upon receipt of the information required to be forwarded pursuant to subdivision (6)(b) of this section, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health carrier of its adverse determination or final adverse determination pursuant to subdivision (7)(a) of this section shall not delay or terminate the external review.

(c) The external review may be terminated only if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination.

(d)(i) Immediately upon making the decision to reverse its adverse determination or final adverse determination as provided in subdivision (7)(c) of this section, the health carrier shall notify the covered person, the covered person's authorized representative, if applicable, the assigned independent review organization, and the director in writing of its decision.

(ii) The assigned independent review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to subdivision (7)(d)(i) of this section.

(8)(a) Except as provided in subdivision (8)(c) of this section, within twenty days after being selected in accordance with subsection (4) of this section to conduct the external review, each clinical reviewer shall provide an opinion to the assigned independent review organization pursuant to subsection (9) of this section on whether the recommended or requested health care service or treatment should be covered.

(b) Except for an opinion provided pursuant to subdivision (8)(c) of this section, each clinical reviewer's opinion shall be in writing and include the following information:

(i) A description of the covered person's medical condition;

(ii) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care service or treatment and the adverse risk of the recommended or requested health care service or treatment would not be substantially increased over that of available standard health care service or treatment;

(iii) A description and analysis of any medical or scientific evidence considered in reaching the opinion;

(iv) A description and analysis of any evidence-based standard; and

(v) Information on whether the reviewer's rationale for the opinion is based on subdivision (9)(e)(i) or (ii) of this section.

(c) For an expedited external review, each clinical reviewer shall provide an opinion orally or in writing to the assigned independent review organization as expeditiously as the covered person's medical condition or circumstances

requires, but in no event more than five calendar days after being selected in accordance with subsection (4) of this section.

(d) If the opinion provided pursuant to subdivision (8)(a) of this section was not in writing, within forty-eight hours following the date that the opinion was provided, the clinical reviewer shall provide written confirmation of the opinion to the assigned independent review organization and include the information required under subdivision (8)(b) of this section.

(9) In addition to the documents and information provided pursuant to subdivision (1)(b) of this section or subsection (5) of this section, each clinical reviewer selected pursuant to subsection (4) of this section, to the extent the information or documents are available and the reviewer considers appropriate, shall consider the following in reaching an opinion pursuant to subsection (8) of this section:

(a) The covered person's pertinent medical records;

(b) The attending physician or health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, if applicable, or the covered person's treating physician or health care professional;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that, but for the health carrier's determination that the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the reviewer's opinion is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier; and

(e) Whether:

(i) The recommended or requested health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or

(ii) Medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care service or treatment and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care service or treatment.

(10)(a)(i) Except as provided in subdivision (10)(a)(ii) of this section, within twenty days after the date it receives the opinion of each clinical reviewer pursuant to subsection (9) of this section, the assigned independent review organization, in accordance with subdivision (10)(b) of this section, shall make a decision and provide written notice of the decision to the covered person, if applicable, the covered person's authorized representative, the health carrier, and the director.

(ii)(A) For an expedited external review, within forty-eight hours after the date it receives the opinion of each clinical reviewer pursuant to subsection (9) of this section, the assigned independent review organization, in accordance with subdivision (10)(b) of this section, shall make a decision and provide notice of the decision orally or in writing to the persons listed in subdivision (10)(a)(i) of this section.

(B) If the notice provided under subdivision (10)(a)(ii)(A) of this section was not in writing, within forty-eight hours after the date of providing that notice, the assigned independent review organization shall provide written confirmation of the decision to the persons listed in subdivision (10)(a)(i) of this section and include the information set forth in subdivision (10)(c) of this section.

(b)(i) If a majority of the clinical reviewers recommend that the recommended or requested health care service or treatment should be covered, the independent review organization shall make a decision to reverse the health carrier's adverse determination or final adverse determination.

(ii) If a majority of the clinical reviewers recommend that the recommended or requested health care service or treatment should not be covered, the independent review organization shall make a decision to uphold the health carrier's adverse determination or final adverse determination.

(iii)(A) If the clinical reviewers are evenly split as to whether the recommended or requested health care service or treatment should be covered, the independent review organization shall obtain the opinion of an additional clinical reviewer in order for the independent review organization to make a decision based on the opinions of a majority of the clinical reviewers pursuant to subdivision (10)(b)(i) or (ii) of this section.

(B) The additional clinical reviewer selected under subdivision (10)(b)(iii)(A) of this section shall use the same information to reach an opinion as the clinical reviewers who have already submitted their opinions pursuant to subsection (9) of this section.

(C) The selection of the additional clinical reviewer shall not extend the time within which the assigned independent review organization is required to make a decision based on the opinions of the clinical reviewers selected under subsection (4) of this section pursuant to subdivision (4)(a) of this section.

(c) The independent review organization shall include in the notice provided pursuant to subdivision (10)(a) of this section:

(i) A general description of the reason for the request for external review;

(ii) The written opinion of each clinical reviewer, including the recommendation of each clinical reviewer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation;

(iii) The date the independent review organization was assigned by the director to conduct the external review;

(iv) The date the external review was conducted;

(v) The date of its decision;

(vi) The principal reason or reasons for its decision; and

(vii) The rationale for its decision.

(d) Upon receipt of a notice of a decision pursuant to subdivision (10)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve coverage of the recommended or requested health care service or treatment that was the subject of the adverse determination or final adverse determination.

(11) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review

organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 10.
Effective date September 6, 2013.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.
Utilization Review Act, see section 44-5416.

44-1311 External review decision; how treated; limitation on subsequent request.

(1) An external review decision is binding on the health carrier except to the extent the health carrier has other remedies available under applicable state law.

(2) An external review decision is binding on the covered person except to the extent the covered person has other remedies available under applicable federal or state law.

(3) A covered person or the covered person's authorized representative, if applicable, shall not file a subsequent request for external review involving the same adverse determination or final adverse determination for which the covered person has already received an external review decision pursuant to the Health Carrier External Review Act.

Source: Laws 2013, LB147, § 11.
Effective date September 6, 2013.

44-1312 Independent review organizations; approval; qualifications; application; contents; fee; termination of approval; director; powers and duties.

(1) The director shall approve independent review organizations eligible to be assigned to conduct external reviews under the Health Carrier External Review Act.

(2) In order to be eligible for approval by the director under this section to conduct external reviews under the act, an independent review organization:

(a) Except as otherwise provided in this section, shall be accredited by a nationally recognized private accrediting entity that the director has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations established under section 44-1313; and

(b) Shall submit an application for approval in accordance with subsection (4) of this section.

(3) The director shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

(4)(a) Any independent review organization wishing to be approved to conduct external reviews under the act shall submit the application form and include with the form all documentation and information necessary for the director to determine if the independent review organization satisfies the minimum qualifications established under section 44-1313.

(b)(i) Subject to subdivision (4)(b)(ii) of this section, an independent review organization is eligible for approval under this section only if it is accredited by a nationally recognized private accrediting entity that the director has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review organizations under section 44-1313.

(ii) The director may approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation.

(c) The director may charge an application fee that independent review organizations shall submit to the director with an application for approval and reapproval.

(5)(a) An approval is effective for two years, unless the director determines before its expiration that the independent review organization is not satisfying the minimum qualifications established under section 44-1313.

(b) Whenever the director determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under section 44-1313, the director shall terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations approved to conduct external reviews under the act that is maintained by the director pursuant to subsection (6) of this section.

(6) The director shall maintain and periodically update a list of approved independent review organizations.

(7) The director may adopt and promulgate rules and regulations to carry out the provisions of this section.

Source: Laws 2013, LB147, § 12.
Effective date September 6, 2013.

44-1313 Independent review organization; minimum qualifications; clinical reviewers; qualifications; limitation on ownership or control; conflict of interests; presumption of compliance; director; powers; duties.

(1) To be approved under section 44-1312 to conduct external reviews, an independent review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in the Health Carrier External Review Act that include, at a minimum:

(a) A quality assurance mechanism in place that:

(i) Ensures that external reviews are conducted within the specified timeframes and that required notices are provided in a timely manner;

(ii) Ensures the selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases and that the independent review organization employs or contracts with an adequate number of clinical reviewers to meet this objective;

(iii) Ensures the confidentiality of medical and treatment records and clinical review criteria; and

(iv) Ensures that any person employed by or under contract with the independent review organization adheres to the requirements of the act;

(b) A toll-free telephone service to receive information on a twenty-four-hours-per-day, seven-days-per-week basis related to external reviews that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours; and

(c) An agreement to maintain and provide to the director the information set out in section 44-1315.

(2) All clinical reviewers assigned by an independent review organization to conduct external reviews shall be physicians or other appropriate health care providers who meet the following minimum qualifications:

(a) Be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

(b) Be knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition of the covered person;

(c) Hold a nonrestricted license in a state of the United States and, for physicians, a current certification by a recognized medical specialty board in the United States in the area or areas appropriate to the subject of the external review; and

(d) Have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical reviewer's physical, mental, or professional competence or moral character.

(3) In addition to the requirements set forth in subsection (1) of this section, an independent review organization may not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

(4)(a) In addition to the requirements set forth in subsections (1), (2), and (3) of this section, to be approved pursuant to section 44-1312 to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor any clinical reviewer assigned by the independent review organization to conduct the external review may have a material professional, familial, or financial conflict of interest with any of the following:

(i) The health carrier that is the subject of the external review;

(ii) The covered person whose treatment is the subject of the external review or the covered person's authorized representative, if applicable;

(iii) Any officer, director, or management employee of the health carrier that is the subject of the external review;

(iv) The health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

(v) The facility at which the recommended health care service or treatment would be provided; or

(vi) The developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.

(b) In determining whether an independent review organization or a clinical reviewer of the independent review organization has a material professional, familial, or financial conflict of interest for purposes of subdivision (4)(a) of this section, the director shall take into consideration situations in which the independent review organization to be assigned to conduct an external review of a specified case or a clinical reviewer to be assigned by the independent review organization to conduct an external review of a specified case may have an apparent professional, familial, or financial relationship or connection with a person described in subdivision (4)(a) of this section, but that the characteristics of that relationship or connection are such that they are not a material professional, familial, or financial conflict of interest that results in the disapproval of the independent review organization or the clinical reviewer from conducting the external review.

(5)(a) An independent review organization that is accredited by a nationally recognized private accrediting entity that has independent review accreditation standards that the director has determined are equivalent to or exceed the minimum qualifications of this section shall be presumed in compliance with this section to be eligible for approval under section 44-1312.

(b) The director shall initially review and periodically review the independent review organization accreditation standards of a nationally recognized private accrediting entity to determine whether the entity's standards are, and continue to be, equivalent to or exceed the minimum qualifications established under this section. The director may accept a review conducted by the National Association of Insurance Commissioners for the purpose of the determination under this subdivision.

(c) Upon request, a nationally recognized private accrediting entity shall make its current independent review organization accreditation standards available to the director or the National Association of Insurance Commissioners in order for the director to determine if the entity's standards are equivalent to or exceed the minimum qualifications established under this section. The director may exclude any private accrediting entity that is not reviewed by the National Association of Insurance Commissioners.

(6) An independent review organization shall be unbiased. An independent review organization shall establish and maintain written procedures to ensure that it is unbiased in addition to any other procedures required under this section.

Source: Laws 2013, LB147, § 13.
Effective date September 6, 2013.

44-1314 Liability for damages.

No independent review organization, clinical reviewer working on behalf of an independent review organization, or employee, agent, or contractor of an independent review organization shall be liable in damages to any person for any opinions rendered or acts or omissions performed within the scope of the organization's or person's duties under the law during or upon completion of an external review conducted pursuant to the Health Carrier External Review

Act, unless the opinion was rendered or act or omission performed in bad faith or involved gross negligence.

Source: Laws 2013, LB147, § 14.
Effective date September 6, 2013.

44-1315 Records; report; contents.

(1)(a) An independent review organization assigned pursuant to section 44-1308, 44-1309, or 44-1310 to conduct an external review shall maintain written records in the aggregate by state and by health carrier on all requests for external review for which it conducted an external review during a calendar year and, upon request, submit a report to the director as required under subdivision (1)(b) of this section.

(b) Each independent review organization required to maintain written records on all requests for external review pursuant to subdivision (1)(a) of this section for which it was assigned to conduct an external review shall submit to the director, upon request, a report in the format specified by the director.

(c) The report shall include in the aggregate by state, and for each health carrier:

(i) The total number of requests for external review;

(ii) The number of requests for external review resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination and the number resolved reversing the adverse determination or final adverse determination;

(iii) The average length of time for resolution;

(iv) A summary of the types of coverages or cases for which an external review was sought, as provided in the format required by the director;

(v) The number of external reviews pursuant to section 44-1308 that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or the covered person's authorized representative; and

(vi) Any other information the director may request or require.

(d) The independent review organization shall retain the written records required pursuant to this subsection for at least three years.

(2)(a) Each health carrier shall maintain written records in the aggregate, by state and for each type of health benefit plan offered by the health carrier, on all requests for external review that the health carrier receives notice of from the director pursuant to the Health Carrier External Review Act.

(b) Each health carrier required to maintain written records on all requests for external review pursuant to subdivision (2)(a) of this section shall submit to the director, upon request, a report in the format specified by the director.

(c) The report shall include in the aggregate, by state, and by type of health benefit plan:

(i) The total number of requests for external review;

(ii) From the total number of requests for external review reported under subdivision (2)(c)(i) of this section, the number of requests determined eligible for a full external review; and

(iii) Any other information the director may request or require.

(d) The health carrier shall retain the written records required pursuant to this section for at least three years.

Source: Laws 2013, LB147, § 15.
Effective date September 6, 2013.

44-1316 Health carrier; cost.

The health carrier against which a request for a standard external review or an expedited external review is filed shall pay the cost of the independent review organization for conducting the external review.

Source: Laws 2013, LB147, § 16.
Effective date September 6, 2013.

44-1317 Health carrier; disclosure; format; contents.

(1)(a) Each health carrier shall include a description of the external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage it provides to covered persons.

(b) The disclosure required by subdivision (1)(a) of this section shall be in a format prescribed by the director.

(2) The description required under subsection (1) of this section shall include a statement that informs the covered person of the right of the covered person to file a request for an external review of an adverse determination or final adverse determination with the director. The statement may explain that external review is available when the adverse determination or final adverse determination involves an issue of medical necessity, appropriateness, health care setting, level of care, or effectiveness. The statement shall include the telephone number and address of the director.

(3) In addition to the contents required by subsection (2) of this section, the statement shall inform the covered person that, when filing a request for an external review, the covered person will be required to authorize the release of any medical records of the covered person that may be required to be reviewed for the purpose of reaching a decision on the external review.

Source: Laws 2013, LB147, § 17.
Effective date September 6, 2013.

44-1318 Applicability of act.

The Health Carrier External Review Act applies to any claim submitted on and after January 1, 2014.

Source: Laws 2013, LB147, § 18.
Effective date September 6, 2013.

ARTICLE 48

INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION

Section

Section
44-4828. Preferences and liens.

44-4805 Injunctions and orders.

(1) Except as provided in subsection (3) of this section, any receiver appointed in a proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act may at any time apply for, and the court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

(a) The transaction of further business;

(b) The transfer of property;

(c) Interference with the receiver or with a proceeding under the act;

(d) Waste of the insurer's assets;

(e) Dissipation and transfer of bank accounts;

(f) The institution or further prosecution of any actions or proceedings;

(g) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its insureds;

(h) The levying of execution against the insurer, its assets, or its insureds;

(i) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of insureds, creditors, or shareholders or the administration of any proceeding under the act.

(2) Except as provided in subsection (3) of this section, the receiver may apply to any court outside of the state for the relief described in subsection (1) of this section.

(3) A Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

Source: Laws 1989, LB 319, § 5; Laws 1991, LB 236, § 62; Laws 2013, LB337, § 1.
Effective date March 21, 2013.

44-4815 Actions; effect of rehabilitation.

(1) Except as provided in subsection (4) of this section, any court in this state before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he or she deems necessary in the interests of justice and for the protection of insureds, creditors, and the public. The rehabilitator shall immediately consider all litigation pending outside this

state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered.

(3) Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

(4) A Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

Source: Laws 1989, LB 319, § 15; Laws 1991, LB 236, § 70; Laws 2013, LB337, § 2.
Effective date March 21, 2013.

44-4821 Powers of liquidator.

(1) The liquidator shall have the power:

(a) To appoint a special deputy to act for him or her under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and to determine his or her reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;

(b) To employ employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she may deem necessary to assist in the liquidation;

(c) To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. Such committee 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 liquidation proceedings conducted under the act;

(d) To fix the reasonable compensation of employees, agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;

(e) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer;

(f) To hold hearings, to subpoena witnesses, to compel their attendance, to administer oaths and affirmations, to examine any person under oath or affirmation, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing and, in connection therewith, to require the production of any books, papers, records, or other documents which he or she deems relevant to the inquiry;

(g) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

(h) To collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose:

(i) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(ii) To do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as he or she deems best; and

(iii) To pursue any creditor's remedies available to enforce his or her claims;

(i) To conduct public and private sales of the property of the insurer;

(j) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer if the transfer can be arranged without prejudice to applicable priorities under section 44-4842;

(k) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He or she shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;

(l) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and shall have priority over any other claims under subdivision (1) of section 44-4842;

(m) To enter into such contracts as are necessary to carry out the order to liquidate and to affirm or disavow any contracts to which the insurer is a party, except that a liquidator shall not have power to disavow, reject, or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement;

(n) To continue to prosecute and to institute in the name of the insurer or in his or her own name any and all suits and other legal proceedings in this state or elsewhere and to abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under section 44-4820, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff;

(o) To prosecute any action which may exist on behalf of the insureds, creditors, members, or shareholders of the insurer against any officer of the insurer or any other person;

(p) To remove any or all records and property of the insurer to the offices of the director or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;

(q) To deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(r) To invest all sums not currently needed unless the court orders otherwise;

(s) To file any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located;

(t) To assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;

(u) To exercise and enforce all the rights, remedies, and powers of any insured, creditor, shareholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 44-4826 to 44-4828, except that a liquidator shall not have power to disavow, reject, or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement;

(v) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment is offered;

(w) To enter into agreements with any receiver or the director, commissioner, or equivalent official of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states; and

(x) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of the act.

(2)(a) If a company placed in liquidation has issued liability policies on a claims-made basis, which policies provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of such policies, for a charge, an extended period to report claims as stated in this subsection. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of any extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or eighteen months from the order of liquidation.

(b) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of

the court. Such offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments, or other fees shall be due on the charge pertaining to the extended period to report claims.

(3) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him or her nor shall it exclude in any manner his or her right to do such other acts not in this section specifically enumerated or otherwise provided for as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(4) Notwithstanding the powers of the liquidator as stated in subsections (1) and (2) of this section, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

Source: Laws 1989, LB 319, § 21; Laws 1991, LB 236, § 75; Laws 2013, LB337, § 3.
Effective date March 21, 2013.

44-4826 Fraudulent transfers and obligations incurred prior to petition.

(1) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall be fraudulent as to then existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. Except as provided in subsection (5) of this section, a transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under the act which is fraudulent under this section may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(2)(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under subsection (3) of section 44-4828.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection shall apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) Except as provided in subsection (5) of this section, any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (1) of this section if:

(a) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions unless the reinsurer gives a present fair equivalent value for the release; and

(b) Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

(4) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(5) A receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement. However, a transfer may be avoided under this subsection if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

Source: Laws 1989, LB 319, § 26; Laws 1991, LB 236, § 78; Laws 2013, LB337, § 4.
Effective date March 21, 2013.

44-4827 Fraudulent transfer after petition.

(1) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part

thereof to the insurer or upon his or her order with the same effect as if the petition were not pending;

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith; and

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (1) of this section shall be liable therefor and shall be bound to account to the liquidator.

(4) Nothing in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act shall impair the negotiability of currency or negotiable instruments.

(5) A receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement. However, a transfer may be avoided under this subsection if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

Source: Laws 1989, LB 319, § 27; Laws 1991, LB 236, § 79; Laws 2013, LB337, § 5.
Effective date March 21, 2013.

44-4828 Preferences and liens.

(1)(a) A preference shall mean a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act the effect of which transfer may be to enable the creditor to obtain a greater percentage of such debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Except as provided in subdivision (1)(d) of this section, any preference may be avoided by the liquidator if:

(i) The insurer was insolvent at the time of the transfer;

(ii) The transfer was made within four months before the filing of the petition;

(iii) The creditor receiving it or to be benefited thereby or his or her agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(iv) The creditor receiving it was: An officer; any employee, attorney, or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position; any shareholder holding directly or indirectly more than five percent of any class of

any equity security issued by the insurer; or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) When the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except when a bona fide purchaser or lienor has given less than fair equivalent value, he or she shall have a lien upon the property to the extent of the consideration actually given by him or her. When a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(d) A liquidator or receiver shall not avoid any preference arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

(2)(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) The provisions of this subsection shall apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3)(a) A lien obtainable by legal or equitable proceedings upon a simple contract shall be one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It shall not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (2) of this section if such consequences would follow only from the lien or purchase itself or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (2) of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

(4) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (2) of this section to be made or suffered after the transfer because of delay in perfecting shall not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) If any lien deemed voidable under subdivision (1)(b) of this section has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under the act which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(6) The property affected by any lien deemed voidable under subsections (1) and (5) of this section shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(7) The district court of Lancaster County shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court shall fix.

(8) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or, when the property is retained under subsection (7) of this section, to the extent of the amount paid to the liquidator.

(9) If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him or her.

(10) If an insurer, directly or indirectly, within four months before the filing of a successful petition for liquidation under the act or at any time in contemplation of a proceeding to liquidate, pays money or transfers property to an attorney for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on

petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate, except that if the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by subdivision (1)(b)(iv) of this section.

(11)(a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he or she has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It shall be permissible to infer that there is a reasonable cause to so believe if the transfer was made within four months before the date of filing of the successful petition for liquidation.

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection (1) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(c) Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

Source: Laws 1989, LB 319, § 28; Laws 1995, LB 616, § 2; Laws 2013, LB337, § 6.
Effective date March 21, 2013.

ARTICLE 60

INSURERS RISK-BASED CAPITAL ACT

Section
44-6007.02. Health organization, defined.
44-6008. Insurer, defined.
44-6009. Negative trend, with respect to a life and health insurer or a fraternal benefit society, defined.
44-6015. Risk-based capital reports.
44-6016. Company action level event.

44-6007.02 Health organization, defined.

Health organization means a health maintenance organization, prepaid limited health service organization, prepaid dental service corporation, or other managed care organization. Health organization does not include a life and health insurer, a fraternal benefit society, or a property and casualty insurer as defined in section 44-6008 that is otherwise subject to either life and health or property and casualty risk-based capital requirements.

Source: Laws 1999, LB 258, § 12; Laws 2013, LB426, § 2.
Effective date September 6, 2013.

44-6008 Insurer, defined.

Insurer means an insurer as defined in section 44-103 authorized to transact the business of insurance, except that insurer does not include health organizations, unincorporated mutual associations, assessment associations, health maintenance organizations, prepaid dental service corporations, prepaid limited health service organizations, monoline mortgage guaranty insurers, mono-

line financial guaranty insurers, title insurers, prepaid legal corporations, intergovernmental risk management pools, and any other kind of insurer to which the application of the Insurers and Health Organizations Risk-Based Capital Act, in the determination of the director, would be clearly inappropriate.

Insurer, when referring to life and health insurers, means an insurer authorized to transact life insurance business and sickness and accident insurance business specified in subdivisions (1) through (4) of section 44-201, or any combination thereof, and also includes fraternal benefit societies authorized to transact business specified in sections 44-1072 to 44-10,109.

Insurer, when referring to property and casualty insurers, means an insurer authorized to transact property insurance business and casualty insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201, or any combination thereof, and also includes an insurer authorized to transact insurance business specified in subdivision (4) of section 44-201 if also authorized to transact insurance business specified in subdivisions (5) through (14) and (16) through (20) of section 44-201.

Source: Laws 1993, LB 583, § 20; Laws 1994, LB 978, § 35; Laws 1999, LB 258, § 13; Laws 2013, LB426, § 3.
Effective date September 6, 2013.

44-6009 Negative trend, with respect to a life and health insurer or a fraternal benefit society, defined.

Negative trend, with respect to a life and health insurer or a fraternal benefit society, 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; Laws 2013, LB426, § 4.
Effective date September 6, 2013.

44-6015 Risk-based capital reports.

(1) Every domestic insurer or domestic health organization shall annually, on or prior to March 1, referred to in this section as the filing date, prepare and submit to the director a risk-based capital report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer or domestic health organization shall file its risk-based capital report:

(a) With the National Association of Insurance Commissioners in accordance with the risk-based capital instructions; and

(b) With the insurance commissioner in any state in which the insurer or health organization is authorized to do business if such insurance commissioner has notified the insurer or health organization of its request in writing, in which case the insurer or health organization shall file its risk-based capital report not later than the later of:

(i) Fifteen days after the receipt of notice to file its risk-based capital report with such state; or

(ii) The filing date.

(2) A life and health insurer's or a fraternal benefit society's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(3) A property and casualty insurer's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(4) A health organization's risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

Such risks shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

(5) An excess of capital over the amount produced by the risk-based capital requirements contained in the Insurers and Health Organizations Risk-Based Capital Act and the formulas, schedules, and instructions referenced in the act is desirable in the business of insurance. Accordingly, insurers and health organizations should seek to maintain capital above the risk-based capital levels required by the act. Additional capital is used and useful in the insurance business and helps to secure an insurer or a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in the act.

(6) If a domestic insurer or a domestic health organization files a risk-based capital report which in the judgment of the director is inaccurate, the director shall adjust the risk-based capital report to correct the inaccuracy and shall

notify the insurer or health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment.

Source: Laws 1993, LB 583, § 27; Laws 1994, LB 978, § 37; Laws 1999, LB 258, § 20; Laws 2013, LB426, § 5.
Effective date September 6, 2013.

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 or a fraternal benefit society, the insurer or society 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; Laws 2013, LB426, § 6. Effective date September 6, 2013.

ARTICLE 73

HEALTH CARRIER GRIEVANCE PROCEDURE ACT

Section
44-7306. Grievance register.
44-7308. Grievance review.
44-7309. Repealed. Laws 2013, LB 147, § 24.
44-7310. Standard review of adverse determinations.
44-7311. Expedited reviews.

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 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. 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 of the grievance;

(e) Date of resolution; 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; Laws 2013, LB147, § 19.
Effective date September 6, 2013.

44-7308 Grievance review.

(1) If a covered person makes a request to a health carrier for a health care service and the request is denied, the health carrier shall provide the covered person with an explanation of the reasons for the denial, a written notice of how to submit a grievance, and the telephone number to call for information

and assistance. The health carrier, at the time of a determination not to certify an admission, a continued stay, or other health care service, shall inform the attending or ordering provider of the right to submit a grievance or a request for an expedited review and, upon request, shall explain the procedures established by the health carrier for initiating a review. A grievance involving an adverse determination may be submitted by the covered person, the covered person's representative, or a provider acting on behalf of a covered person, except that a provider may not submit a grievance involving an adverse determination on behalf of a covered person in a situation in which federal or other state law prohibits a provider from taking that action. A health carrier shall ensure that a majority of the persons reviewing a grievance involving an adverse determination have appropriate expertise. A health carrier shall issue a copy of the written decision to a provider who submits a grievance on behalf of a covered person. A health carrier shall conduct a review of a grievance involving an adverse determination in accordance with subsection (3) of this section and section 44-7310, but such a grievance is not subject to the grievance register reporting requirements of section 44-7306 unless it is a written grievance.

(2)(a) A grievance concerning any matter except an adverse determination may be submitted by a covered person or a covered person's representative. A health carrier shall issue a written decision to the covered person or the covered person's representative within fifteen working days after receiving a grievance. The person or persons reviewing the grievance shall not be the same person or persons who made the initial determination denying a claim or handling the matter that is the subject of the grievance. If the health carrier cannot make a decision within fifteen working days due to circumstances beyond the health carrier's control, the health carrier may take up to an additional fifteen working days to issue a written decision, if the health carrier provides written notice to the covered person of the extension and the reasons for the delay on or before the fifteenth working day after receiving a grievance.

(b) A covered person does not have the right to attend, or to have a representative in attendance, at the grievance review. A covered person is entitled to submit written material. The health carrier shall provide the covered person the name, address, and telephone number of a person designated to coordinate the grievance review on behalf of the health carrier. The health carrier shall make these rights known to the covered person within three working days after receiving a grievance.

(3) The written decision issued pursuant to the procedures described in subsections (1) and (2) of this section and section 44-7310 shall contain:

(a) The names, titles, and qualifying credentials of the person or persons acting as the reviewer or reviewers participating in the grievance review process;

(b) A statement of the reviewers' understanding of the covered person's grievance;

(c) The reviewers' decision in clear terms and the contract basis or medical rationale in sufficient detail for the covered person to respond further to the health carrier's position;

(d) A reference to the evidence or documentation used as the basis for the decision;

(e) In cases involving an adverse determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and

(f) Notice of the covered person's right to contact the director's office. The notice shall contain the telephone number and address of the director's office.

Source: Laws 1998, LB 1162, § 73; Laws 2013, LB147, § 20.
Effective date September 6, 2013.

44-7309 Repealed. Laws 2013, LB 147, § 24.

44-7310 Standard review of adverse determinations.

(1) A health carrier shall establish written procedures for a standard review of an adverse determination. Review procedures shall be available to a covered person and to the provider acting on behalf of a covered person. For purposes of this section, covered person includes the representative of a covered person.

(2) When reasonably necessary or when requested by the provider acting on behalf of a covered person, standard reviews shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination.

(3) For standard reviews the health carrier shall notify in writing both the covered person and the attending or ordering provider of the decision within fifteen working days after the request for a review. The written decision shall contain the provisions required in subsection (3) of section 44-7308.

(4) In any case in which the standard review process does not resolve a difference of opinion between the health carrier and the covered person or the provider acting on behalf of the covered person, the covered person or the provider acting on behalf of the covered person may submit a written grievance, unless the provider is prohibited from filing a grievance by federal or other state law.

Source: Laws 1998, LB 1162, § 75; Laws 2013, LB147, § 21.
Effective date September 6, 2013.

44-7311 Expedited reviews.

(1) A health carrier shall establish written procedures for the expedited review of a grievance involving a situation in which the timeframe of the standard grievance procedures set forth in sections 44-7308 to 44-7310 would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. A request for an expedited review may be submitted orally or in writing. A request for an expedited review of an adverse determination may be submitted orally or in writing and shall be subject to the review procedures of this section, if it meets the criteria of this section. However, for purposes of the grievance register requirements of section 44-7306, a request for an expedited review shall not be included in the grievance register unless the request is submitted in writing. Expedited review procedures shall be available to a covered person and to the provider acting on behalf of a covered person. For purposes of this section, covered person includes the representative of a covered person.

(2) Expedited reviews which result in an adverse determination shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer or peers shall not have been involved in the initial adverse determination.

(3) A health carrier shall provide expedited review to all requests concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility.

(4) An expedited review may be initiated by a covered person or a provider acting on behalf of a covered person.

(5) In an expedited review, all necessary information, including the health carrier's decision, shall be transmitted between the health carrier and the covered person or the provider acting on behalf of a covered person by telephone, facsimile, or the most expeditious method available.

(6) In an expedited review, a health carrier shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the review is commenced. If the expedited review is a concurrent review determination, the health care service shall be continued without liability to the covered person until the covered person has been notified of the determination.

(7) A health carrier shall provide written confirmation of its decision concerning an expedited review within two working days after providing notification of that decision, if the initial notification was not in writing. The written decision shall contain the provisions required in subsection (3) of section 44-7308.

(8) A health carrier shall provide reasonable access, not to exceed one business day after receiving a request for an expedited review, to a clinical peer who can perform the expedited review.

(9) In any case in which the expedited review process does not resolve a difference of opinion between the health carrier and the covered person or the provider acting on behalf of the covered person, the covered person or the provider acting on behalf of the covered person may submit a written grievance, unless the provider is prohibited from filing a grievance by federal or other state law. Except as expressly provided in this section, in conducting the review, the health carrier shall adhere to timeframes that are reasonable under the circumstances.

(10) A health carrier shall not be required to provide an expedited review for retrospective adverse determinations.

Source: Laws 1998, LB 1162, § 76; Laws 2013, LB147, § 22.
Effective date September 6, 2013.

ARTICLE 87

NEBRASKA EXCHANGE TRANSPARENCY ACT

Section

Section

44-8701 Act, how cited.

Sections 44-8701 to 44-8706 shall be known and may be cited as the Nebraska Exchange Transparency Act.

Source: Laws 2013, LB384, § 1.
Effective date May 17, 2013.
Termination date July 1, 2017.

44-8702 Purpose of act.

The purpose of the Nebraska Exchange Transparency Act is to provide state-based recommendations and transparency regarding the implementation and operation of an affordable insurance exchange, as required by the federal Patient Protection and Affordable Care Act, 42 U.S.C. 18001 et seq., by creating the Nebraska Exchange Stakeholder Commission.

Source: Laws 2013, LB384, § 2.
Effective date May 17, 2013.
Termination date July 1, 2017.

44-8703 Nebraska Exchange Stakeholder Commission; created; members; terms; vacancy; removal; hearing.

(1) The Nebraska Exchange Stakeholder Commission is created. For administrative and budgetary purposes only, the commission shall be housed within the Department of Insurance. The commission shall be composed of eleven members as follows:

(a) Nine members shall be appointed by the Governor in the following manner:

(i) Four members to represent the interests of consumers who will access health insurance in the exchange with at least one of such members to represent the interests of rural consumers who will access health insurance in the exchange;

(ii) One member to represent the interests of small businesses who are qualified to purchase health insurance in the exchange;

(iii) Two members to represent the interests of health care providers in the state;

(iv) One member to represent the interests of health insurance carriers who are eligible to offer health plans in the exchange; and

(v) One member to represent the interests of health insurance agents. This member shall not be a captive agent of any health insurance carrier;

(b) The Director of Insurance or his or her designee is a nonvoting, ex officio member of the commission; and

(c) The director of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or his or her designee is a nonvoting, ex officio member of the commission.

(2) The terms of appointed members of the commission shall commence on July 1, 2013.

(3) The appointed members of the commission shall serve for terms of four years, except that of the members first appointed, the Governor shall designate:

(a) One of the members representing the interests of health care providers in the state to serve a term of three years and the other to serve a term of two years;

(b) The member representing the interests of health insurance carriers to serve a term of two years;

(c) The member representing the interests of health insurance agents to serve a term of three years; and

(d) All other members to serve for terms of four years.

(4) A member may be reappointed at the expiration of his or her term. All succeeding appointments to the commission shall be made in the same manner as the original appointments are made, and succeeding appointees shall have the same qualifications as their predecessors.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member such individual succeeds and shall be eligible for appointment to subsequent full terms thereafter.

(6) All appointments whether initial or subsequent shall be subject to the approval of a majority of the members of the Legislature, if the Legislature is in session, and, if the Legislature is not in session, any appointment shall be temporary until the next session of the Legislature, at which time a majority of the members of the Legislature may approve or disapprove such appointment.

(7) A member shall have his or her membership terminated if he or she ceases to meet the qualification for his or her appointment. A member may be removed from the commission for good cause upon written notice and upon an opportunity to be heard before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges and the findings and disposition together with a complete record of the proceedings.

Source: Laws 2013, LB384, § 3.
Effective date May 17, 2013.
Termination date July 1, 2017.

44-8704 Nebraska Exchange Stakeholder Commission; officers; meetings; quorum; expenses.

(1) The Nebraska Exchange Stakeholder Commission shall organize by selecting a chairperson and a vice-chairperson who shall hold office at the pleasure of the commission. The vice-chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position.

(2) The commission shall hold at least four meetings annually, at times and places fixed by the chairperson.

(3) A majority of the members of the commission shall constitute a quorum.

(4) Members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2013, LB384, § 4.
Effective date May 17, 2013.
Termination date July 1, 2017.

44-8705 Nebraska Exchange Stakeholder Commission; duties.

The Nebraska Exchange Stakeholder Commission shall:

(1) Work with state and federal agencies and policymakers to provide recommendations regarding implementation and operation of the exchange, including, but not limited to:

(a) Improving access to high-quality, affordable health coverage options and improving policies and processes on the exchange to ensure a positive and seamless consumer experience;

(b) Promoting competitiveness of the exchange, minimizing administrative burden for issuers, and ensuring consumer protections;

(c) Incorporating existing state policies, capabilities, and infrastructure that can also assist in exchange implementation and operations;

(d) Ensuring the effectiveness of the navigator grant program;

(e) Promoting a seamless integration with the medicaid program and continuity of care for those transitioning between publicly funded coverage and private coverage; and

(f) Ensuring the small business health options program or SHOP Exchange meets the needs and provides value to small businesses;

(2) Create technical and advisory groups as needed to discuss issues related to the exchange and make recommendations to the commission, state or federal agencies, and the Legislature;

(3) Assist the exchange in meeting the stakeholder consultation requirements established in 45 C.F.R. 155.130, as such regulations existed on January 1, 2013;

(4) Identify challenges and problems in the implementation and operation of the exchange and prepare recommendations to alleviate the problems identified; and

(5) Provide a report on or before December 1, 2013, and each December 1 thereafter, to the Governor and the Legislature concerning the implementation and operation of the exchange, challenges and problems identified in the implementation and operation of the exchange, and recommendations to address such problems and challenges. The report to the Legislature shall be submitted electronically.

Source: Laws 2013, LB384, § 5.
Effective date May 17, 2013.
Termination date July 1, 2017.

44-8706 Act; termination.

The Nebraska Exchange Transparency Act terminates on July 1, 2017.

Source: Laws 2013, LB384, § 6.
Effective date May 17, 2013.
Termination date July 1, 2017.

ARTICLE 88

HEALTH INSURANCE EXCHANGE NAVIGATOR REGISTRATION ACT

Section

44-8801 Act, how cited.

Sections 44-8801 to 44-8808 shall be known and may be cited as the Health Insurance Exchange Navigator Registration Act.

Source: Laws 2013, LB568, § 1.
Effective date June 6, 2013.

44-8802 Terms, defined.

For purposes of the Health Insurance Exchange Navigator Registration Act:

(1) Director means the Director of Insurance;

(2) Exchange means any health insurance exchange established or operating in this state, including any exchange established or operated by the United States Department of Health and Human Services; and

(3) Navigator means any individual or entity, other than an insurance producer or consultant, that receives any funding, directly or indirectly, from an exchange, the state, or the federal government to perform the duties identified in 42 U.S.C. 18031(i)(3), as such section existed on January 1, 2013.

Source: Laws 2013, LB568, § 2.
Effective date June 6, 2013.

44-8803 Navigator; registration required; prohibited acts.

(1) No individual or entity shall perform, offer to perform, or advertise any service as a navigator in this state unless registered as a navigator by the director.

(2) A navigator shall not:

(a) Engage in any activities that would require an insurance producer license;

(b) Violate section 44-4050;

(c) Recommend or endorse a particular health plan;

(d) Accept any compensation or consideration from an insurance company, broker, or consultant that is dependent, in whole or in part, on whether a person enrolls in or purchases a qualified health plan; or

(e) Fail to respond to any written inquiry from the director regarding the navigator's duties as a navigator or fail to request additional reasonable time to respond within fifteen working days.

Source: Laws 2013, LB568, § 3.
Effective date June 6, 2013.

44-8804 Individual navigator registration; application; form; contents; fee; entity navigator registration; application; form; contents; fee; notice of federal action; list of employees.

(1) An individual applying for an individual navigator registration shall make application to the director on a form developed by the director which, unless preempted by federal law, is accompanied by the initial individual registration fee in an amount not to exceed twenty-five dollars as established by the director. The individual shall declare in the application under penalty of refusal, suspension, or revocation of the registration that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the director shall find that the individual:

(a) Is at least eighteen years of age;

(b) Has successfully passed an examination prescribed by an exchange established or operating in this state and has been authorized to act as a navigator; and

(c) Has identified any entity navigator with which he or she is affiliated and supervised.

(2) An entity applying for an entity navigator registration shall make application on a form developed by the director and which contains the information prescribed by the director and which, unless preempted by federal law, is accompanied by the initial entity registration fee in an amount not to exceed fifty dollars as established by the director.

(3) The director may require any documents deemed necessary to verify the information contained in an application submitted in accordance with subsections (1) and (2) of this section.

(4) A registered navigator shall, in a manner prescribed by the director, notify the director within thirty days of any federal action that restricts or terminates the navigator's authorization to act as a navigator.

(5) A registered entity navigator shall, in a manner prescribed by the director, provide the director with a list of all individual navigators that it employs, supervises, or is affiliated with.

Source: Laws 2013, LB568, § 4.
Effective date June 6, 2013.

44-8805 Registrations; term; renewal; application; fee; federal training and continuing education requirements.

(1) Individual and entity registrations shall expire one year after the date of issuance.

(2) An individual navigator may file an application for renewal of a registration on a form developed by the director and, unless preempted by federal law, shall pay the renewal fee in an amount not to exceed twenty-five dollars as established by the director, and an entity navigator may file an application for renewal of a registration on a form developed by the director and, unless preempted by federal law, shall pay the renewal fee in an amount not to exceed fifty dollars as established by the director. An individual navigator who fails to file prior to the expiration of the current registration for registration renewal, unless preempted by federal law, shall pay a late fee in an amount not to exceed fifty dollars as established by the director, and an entity navigator that fails to file prior to the expiration of the current registration for registration renewal, unless preempted by federal law, shall pay a late fee in an amount not to exceed fifty dollars as established by the director.

(3) Any failure to fulfill the federal ongoing training and continuing education requirements shall result in the expiration of the registration.

Source: Laws 2013, LB568, § 5.
Effective date June 6, 2013.

44-8806 Navigator; individual with existing health insurance coverage; information.

On contact with an individual who acknowledges having existing health insurance coverage obtained through a licensed insurance producer, a navigator shall make a reasonable effort to inform the individual that he or she may, but is not required to, seek further assistance from that producer or another licensed producer for information, assistance, and any other services and that tax credits may not be available to offset the premium cost of plans that are marketed outside of the exchange.

Source: Laws 2013, LB568, § 6.
Effective date June 6, 2013.

44-8807 Director; disciplinary actions authorized; powers to examine business affairs and records; notice; hearing.

(1) The director, after notice and hearing, may place on probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator registration for violation of the Health Insurance Exchange Navigator Registration Act.

(2) Except as otherwise provided by law, the director may examine and investigate the business affairs and records of any navigator as such business affairs and records regard the navigator's duties as a navigator to determine whether the navigator has engaged or is engaging in any violation of the act.

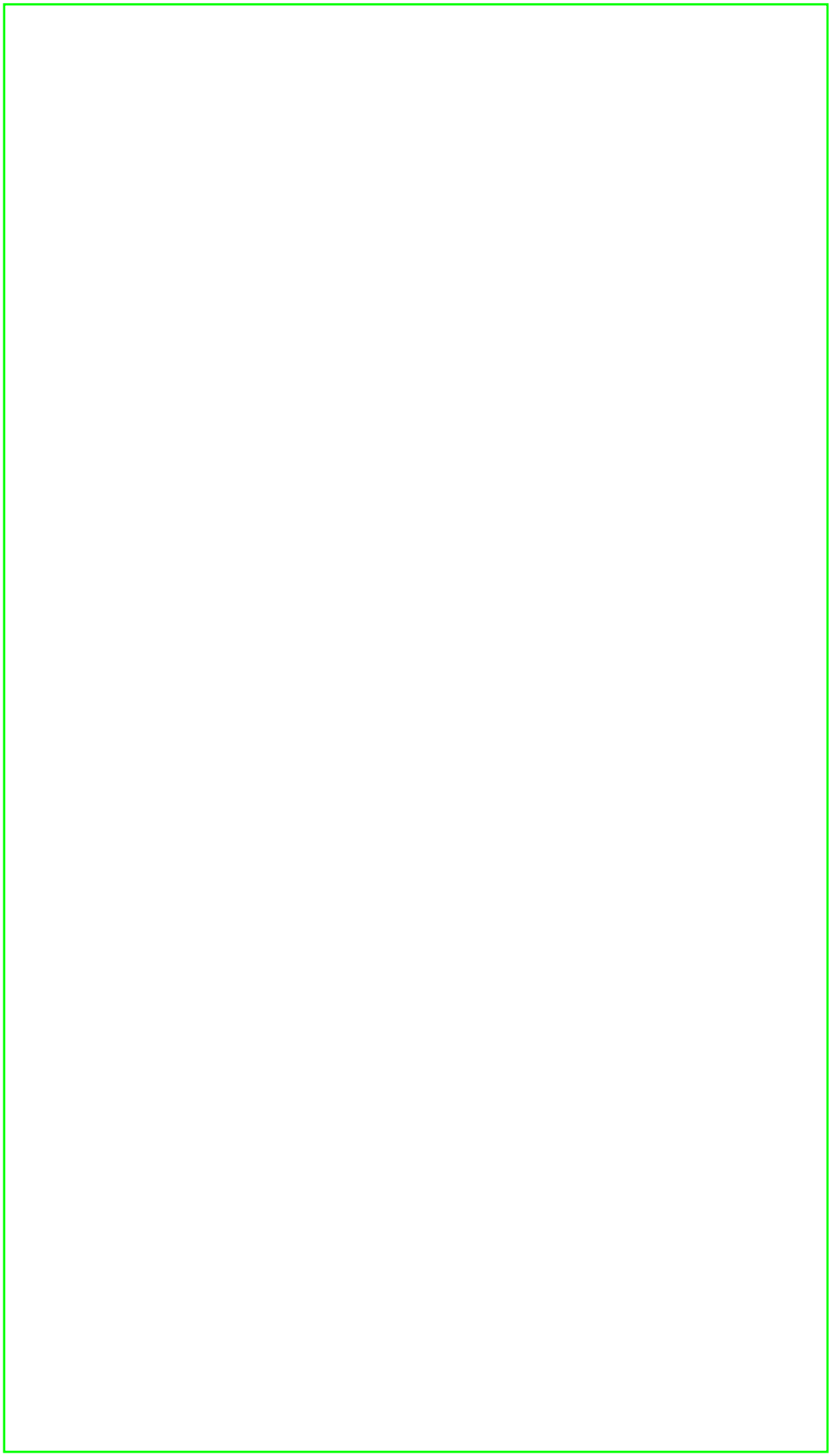
(3) An entity navigator registration may be suspended or revoked or renewal or reinstatement thereof may be refused if the director finds, after notice and hearing, that an individual navigator's violation was known by the employing or supervising entity navigator and the violation was not reported to the director and no corrective action was undertaken.

Source: Laws 2013, LB568, § 7.
Effective date June 6, 2013.

44-8808 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Health Insurance Exchange Navigator Registration Act.

Source: Laws 2013, LB568, § 8.
Effective date June 6, 2013.



CHAPTER 45
INTEREST, LOANS, AND DEBT

Article.
1. Interest Rates and Loans.
   (f) Loan Brokers. 45-190, 45-191.10.
6. Collection Agencies. 45-621.
7. Residential Mortgage Licensing. 45-701 to 45-741.
9. Delayed Deposit Services Licensing Act. 45-920.
10. Nebraska Installment Loan Act. 45-1008 to 45-1018.

ARTICLE 1
INTEREST RATES AND LOANS

(f) LOAN BROKERS

Section
45-190. Terms, defined.
45-191.10. Persons exempt.

(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)(a) Loan broker means any person who:

(i) For or in expectation of consideration from a borrower, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(ii) For or in expectation of consideration from a borrower, assists a borrower in making an application to obtain a loan of money;

(iii) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(iv) Holds himself or herself out, through advertising, signs, or other means, as a loan broker; and

(b) Loan broker does not include: (i) A bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, or credit union which is subject to regulation or supervision under the laws of the United States or any state; (ii) a mortgage banker or installment loan company licensed or registered under the laws of the State of Nebraska; (iii) a credit card company; (iv) an insurance company authorized to conduct

business under the laws of the State of Nebraska; or (v) a lender approved by the Federal Housing Administration or the United States Department of Veterans Affairs, if the loan is secured or covered by guarantees, commitments, or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs;

(6) Loan brokerage agreement means any agreement for services between a loan broker and a borrower; and

(7) Person means natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

Source: Laws 1981, LB 154, § 2; Laws 1982, LB 751, § 1; Laws 1985, LB 86, § 1; Laws 1989, LB 272, § 3; Laws 1993, LB 121, § 271; Laws 1993, LB 270, § 1; Laws 1995, LB 599, § 11; Laws 2001, LB 53, § 87; Laws 2003, LB 131, § 26; Laws 2009, LB327, § 16; Laws 2011, LB75, § 3; Laws 2013, LB279, § 1.
Effective date September 6, 2013.

45-191.10 Persons exempt.

The following persons are exempt from sections 45-189 to 45-191.11 if such person does not hold himself or herself out, through advertising, signs, or other means, as a loan broker: Securities broker-dealer, real estate broker or salesperson, attorney, certified public accountant, or investment adviser.

Source: Laws 1993, LB 270, § 12; Laws 1995, LB 599, § 12; Laws 2013, LB279, § 2.
Effective date September 6, 2013.

ARTICLE 6
COLLECTION AGENCIES

Section
45-621. Nebraska Collection Agency Fund; created; use; investment; transfer.

45-621 Nebraska Collection Agency Fund; created; use; investment; transfer.

(1) All fees collected under the Collection Agency Act shall be remitted to the State Treasurer for credit to a special fund to be known as the Nebraska Collection Agency Fund. The board may use the fund as may be necessary for the proper administration and enforcement of the act. The fund shall be paid out only on proper vouchers approved by the board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer as provided by law. All fees and expenses of the Attorney General in representing the board pursuant to the act shall be paid out of such fund. Transfers from the fund to the Election Administration Fund or the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Collection Agency Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) On or before July 5, 2013, the State Treasurer shall transfer one hundred thousand dollars from the Nebraska Collection Agency Fund to the Election Administration Fund.

Source: Laws 1963, c. 500, § 25, p. 1603; Laws 1971, LB 53, § 2; R.S.1943, (1981), § 81-8,182; Laws 1984, LB 471, § 21; Laws

1989, LB 206, § 3; Laws 1993, LB 261, § 19; Laws 1994, LB 1066, § 31; Laws 2001, LB 541, § 3; Laws 2013, LB199, § 21. Effective date May 26, 2013.

Cross References

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

ARTICLE 7
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; Laws 2012, LB965, § 10; Laws 2013, LB290, § 1.
Effective date September 6, 2013.

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) 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.

(3) 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; Laws 2013, LB290, § 2.
Effective date September 6, 2013.

45-729 Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal; application deemed abandoned; when; effect.

(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 such conviction has been expunged, except that the director may consider the underlying crime, facts, and circumstances of a pardoned or expunged conviction in determining the applicant's eligibility for a license pursuant to subdivision (c) of this subsection; or

(ii) Any felony under state or federal law unless such individual has received a pardon for such conviction or such conviction has been expunged, except that the director may consider the underlying crime, facts, and circumstances of a pardoned or expunged conviction in determining the applicant's eligibility for a license pursuant to subdivision (c) of this subsection;

(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)(a) 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.

(b) 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.

(c) If an applicant for a mortgage loan originator license does not complete his or her license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice after initial filing of the application, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

(d) A decision of the director denying a mortgage loan originator license application pursuant to the Residential Mortgage Licensing 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.

(3) A mortgage loan originator license shall not be assignable.

Source: Laws 2009, LB328, § 14; Laws 2012, LB965, § 15; Laws 2013, LB290, § 3.
Effective date September 6, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

45-737 Mortgage banker; licensee; duties.

A licensee licensed as a mortgage banker 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 or through the Nationwide Mortgage Licensing System and Registry 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 institutes license denial, cease and desist, suspension, or revocation procedures against the licensee;

(d) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents;

(e) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller and servicer;

(f) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents; or

(g) 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 the Nationwide Mortgage Licensing System and Registry 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;

(d) The relocation or closing of a branch office; or

(e) The entry of an order against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents, including orders to which the licensee or other parties consented, by any other state or federal regulator.

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; Laws 2013, LB290, § 4. Effective date September 6, 2013.

45-737.01 Mortgage loan originator; licensee; duties.

(1) A licensee licensed as a mortgage loan originator shall notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by such licensee or notice of a filing of an involuntary petition in bankruptcy against such licensee;

(b) The filing of a criminal indictment or information against such licensee regarding (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;

(c) Such licensee 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;

(d) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against such licensee;

(e) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against such licensee; or

(f) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates such licensee's status as an approved loan originator.

(2) A licensee licensed as a mortgage loan originator shall update through the Nationwide Mortgage Licensing System and Registry his or her employment history on file with the department no later than ten business days after the submission of the required notice of the creation or termination of an employment relationship pursuant to section 45-735.

(3) A licensee licensed as a mortgage loan originator shall notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a material development other than as described in subsections (1) and (2) of this section, including, but not limited to, any of the following:

(a) A change in such licensee's name;

(b) A change in such licensee's residential address;

(c) A change in such licensee's employment address;

(d) The filing of a tax or other governmental lien against such licensee;

(e) The entry of a monetary judgment against such licensee; or

(f) The entry of an order against such licensee, including orders to which such licensee consented, by any other state or federal regulator.

Source: Laws 2013, LB290, § 5.
Effective date September 6, 2013.

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;

(f) The United States Department of Veterans Affairs; or

(g) The Consumer Financial Protection Bureau.

(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; Laws 2013, LB290, § 6.
Effective date September 6, 2013.

ARTICLE 9

DELAYED DEPOSIT SERVICES LICENSING ACT

Section
45-920. Director; examination of licensee; powers; costs.

45-920 Director; examination of licensee; powers; costs.

(1) 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.

(2) The director may accept any examination, report, or information regarding a licensee from the Consumer Financial Protection Bureau or a foreign state agency. The director may provide any examination, report, or information regarding a licensee to the Consumer Financial Protection Bureau or a foreign state agency. As used in this section, unless the context otherwise requires, foreign state agency means any duly constituted regulatory or supervisory agency which has authority over delayed deposit services businesses, payday lenders, or similar entities, and which is created under the laws of any other state or any territory of the United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, or which is operating under the code of law for the District of Columbia.

Source: Laws 1994, LB 967, § 20; Laws 2007, LB124, § 52; Laws 2013, LB279, § 3.
Effective date September 6, 2013.

ARTICLE 10

NEBRASKA INSTALLMENT LOAN ACT

Section
45-1008. License; issuance; requirements; term.
45-1013. Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.
45-1018. Licensees; reports.

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 December 31 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.

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; Laws 2013, LB279, § 4.
Effective date September 6, 2013.

45-1013 Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.

(1) 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) 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; Laws 2013, LB279, § 5.
Effective date September 6, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

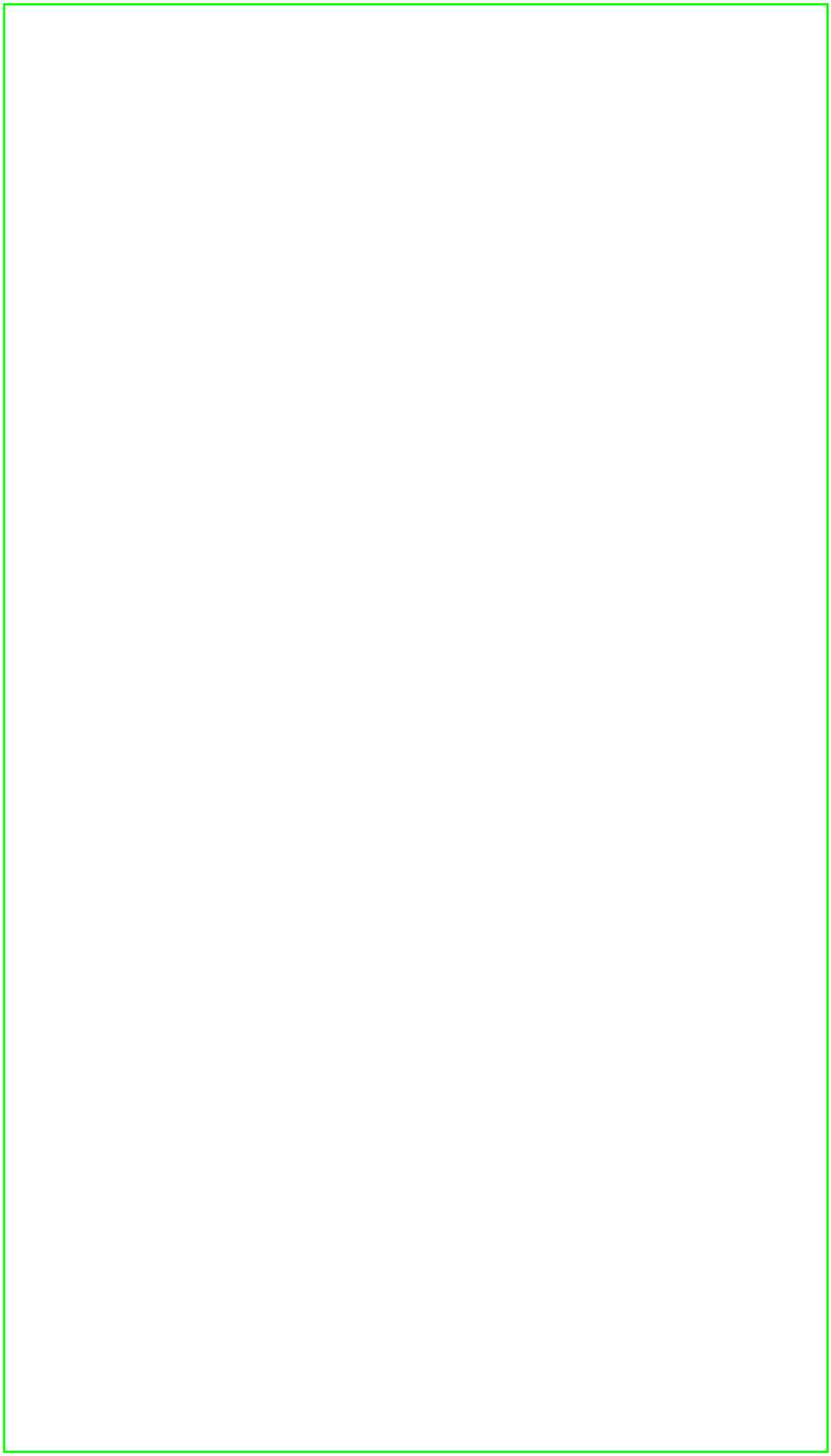
45-1018 Licensees; reports.

(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) 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; Laws 2013, LB279, § 6.
Effective date September 6, 2013.



CHAPTER 46
IRRIGATION AND REGULATION OF WATER

ARTICLE 2
GENERAL PROVISIONS

(m) UNDERGROUND WATER STORAGE

(m) UNDERGROUND WATER STORAGE

46-297 Permit to appropriate water; modification to include underground water storage; procedure.

Any person who has an approved, unperfected appropriation pursuant to Chapter 46, article 2, may apply to the department for a modification of such permit to include intentional underground water storage associated with the appropriation. The application shall be made on a form prescribed and furnished by the department without cost to the applicant. Upon receipt of such an application, the department shall proceed in accordance with rules and regulations adopted and promulgated by the department, subject to section 46-226.02.

Source: Laws 1983, LB 198, § 11; Laws 1997, LB 752, § 120; Laws 2013, LB102, § 1.
Effective date September 6, 2013.

ARTICLE 6
GROUND WATER

(c) PUMPING FOR IRRIGATION PURPOSES

(c) PUMPING FOR IRRIGATION PURPOSES

46-637 Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.

The use of water described in section 46-636 may only be made after securing a permit from the Department of Natural Resources for such use. In approving or disapproving applications for such permits, the Director of Natural Resources shall take into account the effect that such pumping may have on the amount of water in the stream and its ability to meet the requirements of

appropriators from the stream. This section does not apply to (1) water wells located within fifty feet of the bank of a channel of any natural stream which were in existence on July 1, 2000, and (2) replacement water wells as defined in section 46-602 that are located within fifty feet of the banks of a channel of a stream if the water wells being replaced were originally constructed prior to July 1, 2000, and were located within fifty feet of the bank of a channel of any natural stream.

Source: Laws 1963, c. 275, § 2, p. 828; Laws 1993, LB 131, § 17; Laws 1997, LB 30, § 3; Laws 1997, LB 752, § 121; Laws 2000, LB 900, § 176; Laws 2001, LB 667, § 8; Laws 2013, LB102, § 2. Effective date September 6, 2013.

Cross References

Exemption for reusing ground water from reuse pit, see section 46-287.
For additional definitions, see section 46-706.

CHAPTER 48
LABOR

Article.
1. Workers' Compensation.
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ARTICLE 1
WORKERS' COMPENSATION

PART IV. NEBRASKA WORKERS' COMPENSATION COURT

Section
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48-1,111. Repealed. Laws 2013, LB21, § 2.

PART IV
NEBRASKA WORKERS' COMPENSATION COURT

48-162.03 Compensation court; motions; powers.

(1) The Nebraska Workers' Compensation Court or any judge thereof may rule upon any motion addressed to the court by any party to a suit or proceeding, including, but not limited to, motions for summary judgment or other motions for judgment on the pleadings but not including motions for new trial. Several objects may be included in the same motion, if they all grow out of or are connected with the action or proceeding in which it is made.

(2) Parties to a dispute which might be the subject of an action under the Nebraska Workers' Compensation Act may file a motion for an order regarding the dispute without first filing a petition.

(3) If notice of a motion is required, the notice shall be in writing and shall state: (a) The names of the parties to the action, proceeding, or dispute in which it is to be made; (b) the name of the judge before whom it is to be made; (c) the time and place of hearing; and (d) the nature and terms of the order or orders to be applied for. Notice shall be served a reasonable time before the hearing as provided in the rules of the compensation court.

Source: Laws 1997, LB 128, § 5; Laws 2013, LB141, § 1.
Effective date September 6, 2013.

48-166 Compensation court; annual report; contents.

On or before January 1 of each year, the Nebraska Workers' Compensation Court shall submit electronically an annual report to the Clerk of the Legislature for the past fiscal year which shall include (1) pertinent information

regarding settlements and awards made by the compensation court, (2) the causes of the accidents leading to the injuries for which the settlements and awards were made, (3) a statement of the total expense of the compensation court, (4) any other matters which the compensation court deems proper to include, and (5) any recommendations it may desire to make.

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, § 48-166; Laws 1945, c. 113, § 6, p. 366; Laws 1955, c. 231, § 7, p. 720; Laws 1986, LB 811, § 99; Laws 1999, LB 216, § 16; Laws 2013, LB222, § 16.
Effective date May 8, 2013.

48-182 Notice of appeal; bill of exceptions; requirements; waiver of payment; when; extension of time; filing of order.

In case either party at interest refuses to accept any final order of the Nebraska Workers' Compensation Court, such party may, within thirty days thereafter, file with the compensation court a notice of appeal and at the same time the notice of appeal is filed, file with the compensation court a praecipe for a bill of exceptions. Within seven weeks from the date the notice of appeal is filed, the court reporter or transcriber shall deliver to the clerk of the Nebraska Workers' Compensation Court a bill of exceptions which shall include a transcribed copy of the testimony and the evidence taken before the compensation court at the hearing, which transcribed copy when certified to by the person who made or transcribed the record shall constitute the bill of exceptions. The transcript and bill of exceptions shall be paid for by the party ordering the same, except that upon the affidavit of any claimant for workers' compensation, filed with or before the praecipe, that he or she is without means with which to pay and unable to secure such means, payment may, in the discretion of the compensation court, be waived as to such claimant and the bill of exceptions shall be paid for by the compensation court in the same manner as other compensation court expenses.

The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court except as otherwise provided in this section.

When a bill of exceptions has been ordered according to law and the court reporter or transcriber fails to prepare and file the bill of exceptions with the clerk of the Nebraska Workers' Compensation Court within seven weeks from the date the notice of appeal is filed, the Supreme Court may, on the motion of any party accompanied by a proper showing, grant additional time for the preparation and filing of the bill of exceptions under such conditions as the court may require. Applications for such an extension of time shall be regulated and governed by rules of practice prescribed by the Supreme Court. A copy of such order granting an extension of time shall be filed with the Nebraska Workers' Compensation Court by the party requesting such extension within five days after the date of such order.

Source: Laws 1935, c. 57, §§ 13, 15, pp. 194, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-182; Laws 1967, c. 294, § 2, p. 801; Laws 1971, LB 252, § 1; Laws 1973, LB 192, § 1; Laws 1975, LB 187, § 13; Laws 1986, LB 811, § 114; Laws 1986, LB

529, § 51; Laws 1991, LB 732, § 111; Laws 1992, LB 360, § 23; Laws 2011, LB151, § 12; Laws 2013, LB141, § 2.
Effective date September 6, 2013.

PART VI

NAME OF ACT AND APPLICABILITY OF CHANGES

48-1,111 Repealed. Laws 2013, LB21, § 2.

Operative date June 30, 2014.

ARTICLE 31

SUBSIDIZED EMPLOYMENT PILOT PROGRAM

Section
48-3101. Legislative findings.
48-3102. Terms, defined.
48-3103. Subsidized Employment Pilot Program; created; Department of Health and Human Services; duties; Department of Labor; powers; nonprofit organization; duties; report; contents.
48-3104. Subsidies.
48-3105. Nonprofit organization; gather and report performance measures.
48-3106. Termination.
48-3107. Rules and regulations.
48-3108. Appropriations; legislative intent; use.

48-3101 Legislative findings.

The Legislature finds that:

(1) Work experience is necessary to obtain employment in a competitive job market;

(2) Businesses find creating capacity to add employees during a time of economic recovery challenging;

(3) Subsidized employment can benefit employers and workers in need of experience;

(4) Increasing opportunities for public assistance recipients to engage in meaningful workplace experience can significantly contribute to their long-term employability;

(5) Providing subsidized employment can also help businesses to grow; and

(6) States nationwide provide subsidized employment to public assistance recipients in order to aid employers in developing work placements for public assistance recipients.

Source: Laws 2013, LB368, § 1.
Operative date July 1, 2014.

48-3102 Terms, defined.

For purposes of sections 48-3101 to 48-3107:

(1) Aid to dependent children program means the program described in section 43-512; and

(2) Participant means an individual who qualifies for the aid to dependent children program services with a family income equal to or less than two

hundred percent of the Office of Management and Budget income poverty guideline.

Source: Laws 2013, LB368, § 2.
Operative date July 1, 2014.

48-3103 Subsidized Employment Pilot Program; created; Department of Health and Human Services; duties; Department of Labor; powers; nonprofit organization; duties; report; contents.

(1) The Subsidized Employment Pilot Program is created within the Department of Health and Human Services to provide opportunities for employers and participants in the aid to dependent children program to achieve subsidized employment.

(2) The department shall establish a partnership between an entity which contracts with the department pursuant to section 68-1722 to provide case management services in the aid to dependent children program and a nonprofit organization.

(3) The Department of Labor may establish a partnership with the nonprofit organization described in subsection (2) of this section to assist in the referral of participants and employers for the pilot program.

(4) The nonprofit organization described in subsection (2) of this section shall:

(a) Establish an application process for employers to participate in the pilot program. Such application process shall include, but not be limited to, a requirement that employer applicants submit a plan including, but not limited to, the following criteria:

(i) Initial client assessment, job development, job placement, and employment retention services;

(ii) A strategy to place participants in in-demand jobs; and

(iii) Other program guidelines or criteria for the pilot program as needed;

(b) Recruit participants for the pilot program, with assistance from the Department of Health and Human Services, the Department of Labor, and an entity which contracts with the department pursuant to section 68-1722 to provide case management services in the aid to dependent children program;

(c) Recruit employers for the pilot program, with assistance from the Department of Labor;

(d) Determine participant eligibility for the pilot program and assist with employer and employee matching;

(e) Ensure that the pilot program operates in both rural and urban areas. To ensure that the pilot program operates in both rural and urban areas, such nonprofit organization may enter into subcontracts with other nonprofit entities;

(f) Gather the data and performance measures as described in section 48-3105; and

(g) Submit an electronic report on or before September 15 of each year to the Health and Human Services Committee of the Legislature containing the data and performance measures described in section 48-3105.

Source: Laws 2013, LB368, § 3.
Operative date July 1, 2014.

48-3104 Subsidies.

Subsidies under the Subsidized Employment Pilot Program created pursuant to section 48-3103 shall be capped at the prevailing wage and shall be provided for no more than forty hours per week for not more than six months, on the following scale:

(1) One hundred percent in months one and two;

(2) Seventy-five percent in month three;

(3) Fifty percent in months four and five; and

(4) Twenty-five percent in month six.

Source: Laws 2013, LB368, § 4.
Operative date July 1, 2014.

48-3105 Nonprofit organization; gather and report performance measures.

The nonprofit organization described in subsection (2) of section 48-3103 shall ensure the gathering and reporting of the following performance measures:

(1) Number of employees participating in the Subsidized Employment Pilot Program;

(2) Length of time each employee has participated in the program;

(3) Wages paid to employees in the program;

(4) Employment status of each employee at completion of his or her participation in the program, six months after such completion, and twelve months after such completion;

(5) Wages of each employee at completion of his or her participation in the program, six months after such completion, and twelve months after such completion;

(6) Number of employers participating in the program; and

(7) Length of time each employer has participated in the program.

Source: Laws 2013, LB368, § 5.
Operative date July 1, 2014.

48-3106 Termination.

The Subsidized Employment Pilot Program created under section 48-3103 terminates on July 1, 2018.

Source: Laws 2013, LB368, § 6.
Operative date July 1, 2014.

48-3107 Rules and regulations.

The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out sections 48-3101 to 48-3106.

Source: Laws 2013, LB368, § 7.
Operative date July 1, 2014.

48-3108 Appropriations; legislative intent; use.

It is the intent of the Legislature to appropriate one million dollars each fiscal year for FY2014-15 to FY2017-18 from funds available to the federal Temporary

Assistance for Needy Families program, 42 U.S.C. 601 et seq., as such sections existed on January 1, 2013, to carry out sections 48-3101 to 48-3106. No more than ten percent of the funds appropriated to carry out sections 48-3101 to 48-3106 shall be used for administrative costs. Administrative cost shall not be defined to include cost for service delivery. Any of such funds which are unexpended on June 30, 2018, shall lapse to the federal Temporary Assistance for Needy Families program on such date.

Source: Laws 2013, LB368, § 8.
Operative date July 1, 2014.

CHAPTER 49
LAW

Article.
8. Definitions, Construction, and Citation. 49-801.01.
14. Nebraska Political Accountability and Disclosure Act.
(a) General Provisions. 49-1413 to 49-1433.01.
(b) Campaign Practices. 49-1445 to 49-1479.02.
(c) Lobbying Practices. 49-1488.01.
(e) Nebraska Accountability and Disclosure Commission. 49-14,122 to 49-14,140.
(f) Digital and Electronic Filing. 49-14,141.

ARTICLE 8
DEFINITIONS, CONSTRUCTION, AND CITATION

Section
49-801.01. Internal Revenue Code; reference.

49-801.01 Internal Revenue Code; reference.

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109, 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, 77-5903, 77-6302, and 77-6306, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on March 8, 2013.

Source: Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1; Laws 2009, LB251, § 1; Laws 2010, LB879, § 2; Laws 2011, LB134, § 1; Laws 2011, LB389, § 11; Laws 2012, LB725, § 1; Laws 2012, LB1128, § 20; Laws 2013, LB24, § 1.
Effective date March 8, 2013.

ARTICLE 14
NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

(a) GENERAL PROVISIONS

Section
49-1413. Committee, defined.
49-1415. Contribution, defined.
49-1433.01. Major out-of-state contributor, defined.

(b) CAMPAIGN PRACTICES

49-1445. Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.

Section

(a) GENERAL PROVISIONS

49-1413 Committee, defined.

(1) Committee shall mean (a) any combination of two or more individuals which receives contributions or makes expenditures of five thousand dollars or

more 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 five thousand dollars or more 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 five thousand dollars in a calendar year as prescribed in this section.

(3) A corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership 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; Laws 2013, LB79, § 2.
Operative date January 1, 2014.

49-1415 Contribution, defined.

(1) Contribution shall mean a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.

(2) Contribution shall include the purchase of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fundraising events; an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy; and the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office.

(3) Contribution shall not include:

(a) Volunteer personal services provided without compensation, or payments of costs incurred of two hundred fifty dollars or less in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid;

(b) Amounts received pursuant to a pledge or promise to the extent that the amounts were previously reported as a contribution; or

(c) Food and beverages, in the amount of fifty dollars or less in value during a calendar year, which are donated by an individual and for which reimbursement is not given.

Source: Laws 1976, LB 987, § 15; Laws 2013, LB79, § 3.
Operative date January 1, 2014.

49-1433.01 Major out-of-state contributor, defined.

Major out-of-state contributor means a corporation, union, industry association, trade association, or professional association which is not organized under the laws of the State of Nebraska and which makes contributions or expenditures totaling ten thousand dollars or more in any calendar year in connection with one or more elections.

Source: Laws 1997, LB 49, § 6; Laws 2013, LB79, § 4.
Operative date January 1, 2014.

(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 five thousand dollars or more 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 five thousand dollars or more 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 five thousand dollars or more 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 five thousand dollars or more 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; Laws 2013, LB79, § 5.
Operative date January 1, 2014.

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) 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; Laws 2013, LB79, § 6.
Operative date January 1, 2014.

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 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; Laws 2013, LB79, § 7.
Operative date January 1, 2014.

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. The candidate shall be personally liable 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 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; Laws 2013, LB79, § 8.
Operative date January 1, 2014.

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 two hundred fifty dollars or more 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 two hundred fifty dollars or more 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 two hundred fifty dollars or more 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 the calendar year of the election.

(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; Laws 2013, LB79, § 9.
Operative date January 1, 2014.

49-1456 Committee account; income; how treated; loans.

(1) Any income received by a committee on an account consisting of funds or property belonging to the committee shall not be considered a contribution to

the committee but shall be reported as income. Any interest paid by a committee shall be reported as an expenditure.

(2) A loan made or received shall be set forth in a separate schedule providing the date and amount of the loan and, if the loan is repaid, the date and manner of repayment. The committee shall provide the name and address of the lender and any person who is liable directly, indirectly, or contingently on each loan of two hundred fifty dollars or more.

Source: Laws 1976, LB 987, § 56; Laws 1981, LB 134, § 3; Laws 1999, LB 416, § 8; Laws 2013, LB79, § 10.
Operative date January 1, 2014.

49-1457 Political party committee; campaign statement; contents, enumerated; contribution and expenditure information.

(1) The campaign statement filed by a political party committee shall contain the following information:

(a) The full name and street address of each person from whom contributions totaling two hundred fifty dollars or more in value are received in a calendar year, the amount, and the date or dates contributed; and if the person is a committee, the name and address of the committee and the full name and street address of the committee treasurer, together with the amount of the contribution and the date received;

(b) An itemized list of all expenditures, including in-kind contributions and expenditures and loans, made during the period covered by the campaign statement which were contributions to a candidate committee of a candidate for elective office or a ballot question committee; or independent expenditures in support of the qualification, passage, or defeat of a ballot question, or in support of the nomination or election of a candidate for elective office or the defeat of any of the candidate's opponents;

(c) The total expenditure by the committee for each candidate for elective office or ballot question in whose behalf an independent expenditure was made or a contribution was given for the election; and

(d) The filer's name, address, and telephone number, if any, and the full name, residential and business addresses, and telephone numbers of the committee treasurer.

(2) A contribution to a candidate or ballot question committee listed under subdivision (1)(b) of this section shall note the name and address of the committee, the name of the candidate and the office sought, if any, the amount contributed, and the date of the contribution.

(3) An independent expenditure listed under subdivision (1)(b) of this section shall note the name of the candidate for whose benefit the expenditure was made and the office sought by the candidate, or a brief description of the ballot question for which the expenditure was made, the amount, date, and purpose of the expenditure, and the full name and address of the person to whom the expenditure was made.

(4) An expenditure listed which was 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.

Source: Laws 1976, LB 987, § 57; Laws 1999, LB 416, § 9; Laws 2013, LB79, § 11.
Operative date January 1, 2014.

49-1459 Campaign statements; filing schedule; statement of exemption.

(1) Except as provided in subsection (2) of this section, campaign statements as required by the Nebraska Political Accountability and Disclosure Act shall be filed according to the following schedule:

(a) A first preelection campaign statement shall be filed not later than the thirtieth day before the election. The closing date for a campaign statement filed under this subdivision shall be the thirty-fifth day before the election;

(b) A second preelection campaign statement shall be filed not later than the tenth day before the election. The closing date for a campaign statement filed under this subdivision shall be the fifteenth day before the election; and

(c) A postelection campaign statement shall be filed not later than the fortieth day following the primary election and the seventieth day following the general election. The closing date for a postelection campaign statement to be filed under this subdivision after the primary election shall be the thirty-fifth day following the election. The closing date for a postelection campaign statement to be filed under this subdivision after the general election shall be December 31 of the year in which the election is held. If all liabilities of a candidate and committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the dates provided under this subdivision.

(2) Any committee may file a statement with the commission indicating that the committee does not expect to receive contributions or make expenditures of more than one thousand dollars in the calendar year of an election. Such statement shall be signed by the committee treasurer or the assistant treasurer, and in the case of a candidate committee, it shall also be signed by the candidate. Such statement shall be filed on or before the thirtieth day before the election. A committee which files a statement pursuant to this subsection is not required to file campaign statements according to the schedule prescribed in subsection (1) of this section but shall file a sworn statement of exemption not later than the fortieth day following the primary election and the seventieth day following the general election stating only that the committee did not, in fact, receive or expend an amount in excess of one thousand dollars. If the committee receives contributions or makes expenditures of more than one thousand dollars during the election year, the committee is then subject to all campaign filing requirements under subsection (1) of this section.

Source: Laws 1976, LB 987, § 59; Laws 1980, LB 535, § 10; Laws 1993, LB 587, § 14; Laws 1998, LB 632, § 3; Laws 1999, LB 416, § 11; Laws 2013, LB79, § 12.
Operative date January 1, 2014.

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 of one hundred thousand dollars or more 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; Laws 2013, LB79, § 13.
Operative date January 1, 2014.

49-1463 Campaign statement; statement of exemption; violations; late filing fee.

(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.

(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; Laws 2013, LB79, § 14.
Operative date January 1, 2014.

49-1463.01 Late filing fee; relief; reduction or waiver; when.

(1) A person required to pay a late filing fee imposed under section 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 five thousand dollars or less 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; Laws 2013, LB79, § 15.
Operative date January 1, 2014.

49-1464 Campaign statements of committees; where filed.

The campaign statement of any committee, including a candidate committee, a ballot question committee, or a political party committee, shall be filed with the commission.

Source: Laws 1976, LB 987, § 64; Laws 1980, LB 535, § 14; Laws 1993, LB 587, § 16; Laws 2001, LB 242, § 5; Laws 2013, LB79, § 16.
Operative date January 1, 2014.

49-1467 Person; independent expenditure report; when filed; contents; 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 two hundred fifty dollars or more, 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 two hundred fifty dollars or more to the expenditure.

(3) 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.

(4) 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; Laws 2013, LB79, § 17.
Operative date January 1, 2014.

49-1469 Businesses and organizations; contributions, expenditures, or services; report; contents; separate segregated political fund; when required.

(1) A corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership, 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) Any such entity 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 two hundred fifty dollars or more, 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) Any entity specified in subsection (1) of this section 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; Laws 2013, LB79, § 18.
Operative date January 1, 2014.

49-1469.05 Businesses and organizations; separate segregated political fund; restrictions.

(1) An entity specified in subsection (1) of section 49-1469 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, limited liability company, or limited liability partnership 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; Laws 2013, LB79, § 19.
Operative date January 1, 2014.

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, industry, trade, or professional association, limited liability company, or limited liability partnership, 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 an entity specified in subsection (1) of section 49-1469. 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 entity 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 any such entity may be paid from the separate segregated political fund of such entity.

Source: Laws 2005, LB 242, § 21; Laws 2013, LB79, § 20.
Operative date January 1, 2014.

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 entity which establishes and administers such fund shall make the reports and filings required therefor.

Source: Laws 2005, LB 242, § 22; Laws 2013, LB79, § 21.
Operative date January 1, 2014.

49-1469.08 Businesses and organizations; late filing fee; violation; penalty.

(1) Any entity specified in subsection (1) of section 49-1469 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; Laws 2013, LB79, § 22.
Operative date January 1, 2014.

49-1477 Contributions from persons other than committee; information required; violation; penalty.

No person shall receive a contribution from a person other than a committee unless, for purposes of the recipient person's record-keeping and reporting requirements, the contribution is accompanied by the name and address of

each person who contributed one hundred dollars or more to the contribution. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 77; Laws 1977, LB 41, § 50; Laws 2013, LB79, § 23.
Operative date January 1, 2014.

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 two hundred dollars or more 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; Laws 2013, LB79, § 24.
Operative date January 1, 2014.

(c) LOBBYING PRACTICES

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 five thousand dollars or less 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; Laws 2013, LB79, § 25.
Operative date January 1, 2014.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

49-14,122 Commission; field investigations and audits; purpose.

The commission shall make random field investigations and audits with respect to campaign statements and activity reports filed with the commission under the Nebraska Political Accountability and Disclosure Act. Any audit or investigation conducted of a candidate's campaign statements during a campaign shall include an audit or investigation of the statements of his or her opponent or opponents as well. The commission may also carry out field investigations or audits with respect to any campaign statement, registration, report, or other statement filed under the act if the commission or the executive director deems such investigations or audits necessary to carry out the purposes of the act.

Source: Laws 1976, LB 987, § 122; Laws 1993, LB 587, § 18; Laws 2013, LB79, § 26.
Operative date January 1, 2014.

49-14,123 Commission; duties.

In addition to any other duties prescribed by law, the commission shall:

(1) Adopt and promulgate rules and regulations to carry out 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 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 act 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 act;

(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 act;

(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 act upon the request of a person or government body directly covered or affected by the act. 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 adopted and promulgated thereunder;

(12) Receive all late filing fees, civil penalties, and interest imposed pursuant to the Nebraska Political Accountability and Disclosure Act and remit all such funds to the State Treasurer for credit to the Nebraska Accountability and Disclosure Commission 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 134, § 9; Laws 1981, LB 545, § 13; 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; Laws 2013, LB79, § 27.
Operative date January 1, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

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) For purposes of conducting preliminary investigations under 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.

(3) 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.

(4) 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.

(5) 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; Laws 2013, LB79, § 28.
Operative date January 1, 2014.

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 requests that the proceedings be public. If the commission determines that there was no violation of the act or any rule or regulation adopted and promulgated under the act, the records and actions relative to the investigation 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; Laws 2013, LB79, § 29.
Operative date January 1, 2014.

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 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; Laws 2013, LB79, § 30.
Operative date January 1, 2014.

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 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 the 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 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 the 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 the 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 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; Laws 2013, LB79, § 31.
Operative date January 1, 2014.

49-14,126 Commission; violation; orders; civil penalty; costs of hearing.

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:

(1) Cease and desist from the violation;

(2) File any report, statement, or other information as required;

(3) Pay a civil penalty of not more than two thousand dollars for each violation of the act, rule, or regulation; or

(4) Pay the costs of the hearing in a contested case if the violator did not appear at the hearing personally or by counsel.

Source: Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11; Laws 1997, LB 420, § 23; Laws 1999, LB 416, § 19; Laws 2006, LB 188, § 18; Laws 2007, LB464, § 5; Laws 2011, LB176, § 1; Laws 2013, LB79, § 32.
Operative date January 1, 2014.

49-14,129 Commission; suspend or modify reporting requirements; conditions.

The commission, by order, may suspend or modify any of the reporting requirements of the Nebraska Political Accountability and Disclosure Act, in a particular case, for good cause shown, or if it finds that literal application of the act works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of the act. Any such suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required by this section.

Source: Laws 1976, LB 987, § 129; Laws 1980, LB 535, § 19; Laws 1993, LB 587, § 19; Laws 2013, LB79, § 33.
Operative date January 1, 2014.

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 or entity specified in subsection (1) of section 49-1469 may be used for soliciting contributions from such committee or entity 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; Laws 2013, LB79, § 34.
Operative date January 1, 2014.

49-14,133 Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney.

The Attorney General has jurisdiction to enforce the criminal provisions of the Nebraska Political Accountability and Disclosure Act. The county attorney of the county in which a violation of the 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; Laws 2013, LB79, § 35.
Operative date January 1, 2014.

49-14,140 Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.

The Nebraska Accountability and Disclosure Commission Cash Fund is hereby created. The fund shall consist of funds received by the commission pursuant to sections 49-1449.01, 49-1470, 49-1480.01, 49-1482, 49-14,123, and 49-14,123.01 and subdivision (4) of section 49-14,126. The fund shall be used by the commission in administering the Nebraska Political Accountability and Disclosure Act. Any money in the Nebraska Accountability and Disclosure Commission Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

On April 25, 2013, the State Treasurer shall transfer $630,870 from the Campaign Finance Limitation Cash Fund to the Nebraska Accountability and Disclosure Commission Cash Fund to be used for development, implementation, and maintenance of an electronic filing system for campaign statements and other reports under the Nebraska Political Accountability and Disclosure Act and for making such statements and reports available to the public on the web site of the commission. The State Treasurer shall transfer the balance of the Campaign Finance Limitation Cash Fund to the Election Administration Fund on or before July 5, 2013, or as soon thereafter as administratively possible.

Source: Laws 1989, LB 815, § 4; Laws 1994, LB 872, § 13; Laws 1994, LB 1066, § 40; Laws 1994, LB 1243, § 15; Laws 2007, LB527, § 5; Laws 2009, First Spec. Sess., LB3, § 25; Laws 2011, LB176, § 2; Laws 2013, LB79, § 36.
Operative date April 25, 2013.

Cross References

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

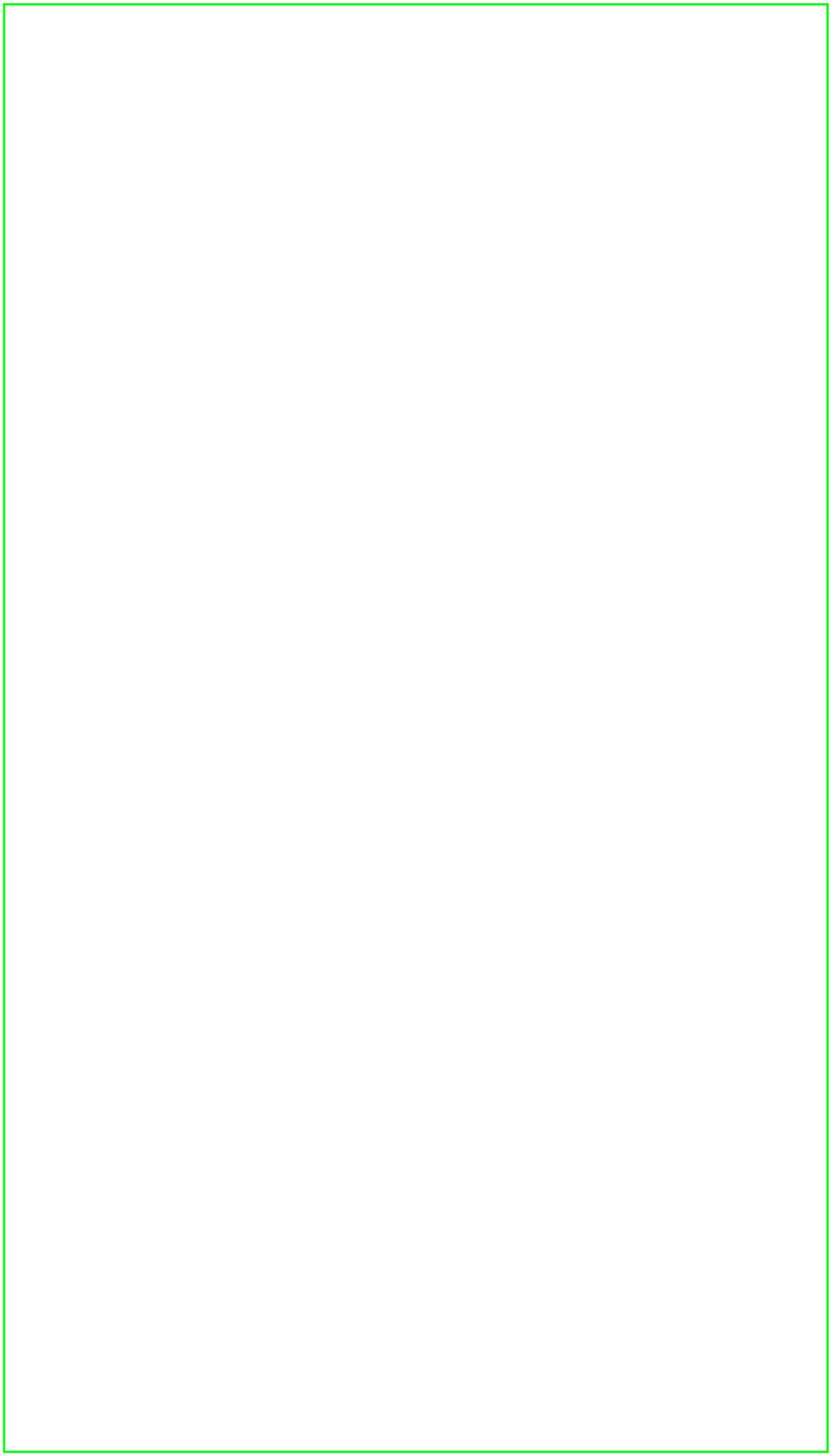
(f) DIGITAL AND ELECTRONIC FILING

49-14,141 Electronic filing system; campaign statements and reports; availability; procedures for filings.

(1) The commission shall develop, implement, and maintain an electronic filing system for campaign statements and other reports required to be filed with the commission under the Nebraska Political Accountability and Disclosure Act and shall provide for such statements and reports to be made available to the public on its web site as soon as practicable.

(2) The commission may adopt procedures for the digital and electronic filing of any report or statement with the commission as required by the act. Any procedures for digital filing shall comply with the provisions of section 86-611. The commission may adopt authentication procedures to be used as a verification process for statements or reports filed digitally or electronically. Compliance with authentication procedures adopted by the commission shall have the same validity as a signature on any report, statement, or verification statement.

Source: Laws 1999, LB 581, § 3; Laws 2002, LB 1105, § 438; Laws 2013, LB79, § 37.
Operative date January 1, 2014.



CHAPTER 50
LEGISLATURE

Article.
4. Legislative Council. 50-405 to 50-425.
5. Planning. 50-502 to 50-508.
12. Legislative Performance Audit Act. 50-1202 to 50-1214.

ARTICLE 4
LEGISLATIVE COUNCIL

Section
50-405. Legislative Council; duties; investigations; studies.
50-406. Legislative Council; committees; public hearings; oaths; subpoenas; books and records; examination; litigation; appeal.
50-407. Legislative Council; committees; subpoenas; enforcement; refusal to testify.
50-424. Health and Human Services Committee; implementation of child welfare reform recommendations; report.
50-425. Education Committee of Legislature; study uses of State Lottery Act proceeds dedicated to education; report.

50-405 Legislative Council; duties; investigations; studies.

It shall be the duty of the council (1) to investigate and study the possibilities for consolidation in state government for elimination of all unnecessary activities and of all duplication in office personnel and equipment and of the coordination of departmental activities or of methods of increasing efficiency and effecting economies, (2) to investigate and study the possibilities of reforming the system of local government with a view to simplifying the organization of government, (3) to study the merit system as it relates to state and local government personnel, (4) to cooperate with the administration in devising means of enforcing the law and improving the effectiveness of administrative methods, (5) to study and inquire into the financial administration of the state government and the subdivisions thereof, the problems of taxation, including assessment and collection of taxes, and the distribution of the tax burden, and (6) to study and inquire into future planning of capital construction of the state and its governmental agencies as to location and sites for expansion.

Source: Laws 1937, c. 118, § 3, p. 422; C.S.Supp.,1941, § 50-503; R.S. 1943, § 50-405; Laws 1969, c. 431, § 1, p. 1453; Laws 1986, LB 996, § 1; Laws 2012, LB782, § 75; Laws 2013, LB222, § 17. Effective date May 8, 2013.

50-406 Legislative Council; committees; public hearings; oaths; subpoenas; books and records; examination; litigation; appeal.

In the discharge of any duty imposed by the Legislative Council, by statute, or by a resolution of the Legislature, the council, any committee thereof, and any standing or special committee created by statute or resolution of the Legislature may hold public hearings and may administer oaths, issue subpoenas when the committee has received prior approval by a majority vote of the Executive Board of the Legislative Council to issue subpoenas in connection with the

specific inquiry or investigation in question, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. The council or the committee may require any state agency, political subdivision, or person to provide information relevant to the committee's work, and the state agency, political subdivision, or person shall provide the information requested within thirty days after the request except as provided for in a subpoena. The statute or resolution creating a committee may prescribe limitations on the authority granted by this section.

Litigation to compel or quash compliance with authority exercised pursuant to this section shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the Court of Appeals within ten days after a decision is rendered.

The district court of Lancaster County has jurisdiction over all litigation arising under this section. In all such litigation the executive board shall provide for legal representation for the council or committee.

Source: Laws 1937, c. 118, § 4, p. 422; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-406; Laws 1949, c. 168, § 3, p. 445; Laws 1965, c. 313, § 1, p. 875; Laws 2013, LB613, § 1.
Effective date June 6, 2013.

50-407 Legislative Council; committees; subpoenas; enforcement; refusal to testify.

In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he or she may be lawfully interrogated, the district court of Lancaster County or the judge thereof, on application of a member of the council, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

If a witness refuses to testify before a special committee of the Legislature authorized pursuant to section 50-404 on the basis of the privilege against self-incrimination, the chairperson of the committee may request a court order pursuant to sections 29-2011.02 and 29-2011.03.

Source: Laws 1937, c. 118, § 4, p. 423; C.S.Supp.,1941, § 50-504; R.S. 1943, § 50-407; Laws 1949, c. 168, § 4, p. 445; Laws 1990, LB 1246, § 16; Laws 2013, LB613, § 2.
Effective date June 6, 2013.

50-424 Health and Human Services Committee; implementation of child welfare reform recommendations; report.

On December 15 of 2012, 2013, and 2014, the Health and Human Services Committee of the Legislature shall provide a report to the Legislature, Governor, and Chief Justice of the Supreme Court with respect to the progress made by the Department of Health and Human Services implementing the recommendations of the committee contained in the final report of the study conducted by the committee pursuant to Legislative Resolution 37, One Hundred Second Legislature, First Session, 2011. The report submitted to the Legislature shall be submitted electronically. In order to facilitate such report, the depart-

ment shall provide electronically to the committee by September 15 of 2012, 2013, and 2014 the reports required pursuant to sections 43-296, 43-534, 68-1207.01, 71-825, 71-1904, and 71-3407 and subdivision (6) of section 43-405. The Children's Behavioral Health Oversight Committee of the Legislature shall provide its final report to the Health and Human Services Committee of the Legislature on or before September 15, 2012.

Source: Laws 2012, LB1160, § 10; Laws 2013, LB222, § 18.
Effective date May 8, 2013.

50-425 Education Committee of Legislature; study uses of State Lottery Act proceeds dedicated to education; report.

The Education Committee of the Legislature shall conduct a study of potential uses of the funds dedicated to education from proceeds of the lottery conducted pursuant to the State Lottery Act. The committee shall submit a report electronically on the findings and any recommendations to the Clerk of the Legislature on or before December 31, 2014. Factors the study shall consider, but not be limited to, include:

(1) The educational priorities of the state;

(2) What types of educational activities are suited to being funded by state lottery funds as opposed to state general funds;

(3) Whether state lottery funds should be used for significant projects requiring temporary funding or to sustain ongoing activities; and

(4) Whether periodic reviews of the use of lottery funds for education should be scheduled.

Source: Laws 2013, LB497, § 3.
Effective date May 30, 2013.

Cross References

State Lottery Act, see section 9-801.

ARTICLE 5
PLANNING

Section

50-502 Department of Administrative Services; state's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.

The Department of Administrative Services shall, on or before December 1 of each year, present its plan regarding the management of the state's health care

insurance programs and the health care trust fund to the Appropriations Committee of the Legislature. This presentation shall include, but is not limited to, the amount of reserves in the trust fund.

Source: Laws 2013, LB620, § 1.
Effective date September 6, 2013.

50-503 University of Nebraska; university's health care insurance programs and health care trust fund; plan presented to Appropriations Committee.

The University of Nebraska shall, on or before December 1 of each year, present its plan regarding the management of the university's health care insurance programs and its health care trust fund to the Appropriations Committee of the Legislature. This presentation shall include, but is not limited to, the amount of reserves in the trust fund.

Source: Laws 2013, LB620, § 2.
Effective date September 6, 2013.

50-504 Water Funding Task Force; legislative findings.

The Legislature finds that:

(1) Nebraska's water resources are finite and must be wisely managed to ensure their continued availability for beneficial use;

(2) The state must invest in: (a) Research and data gathering; (b) further integrating the management of Nebraska's water supplies; (c) improving the state's aging and antiquated water supply infrastructure; (d) building new water supply infrastructure; (e) promoting coordination and collaboration among all water users; and (f) providing information to policymakers to justify a stable source of project funds;

(3) To determine the costs of effective conservation, sustainability, and management of Nebraska's water resources, the state's identified water needs must be compiled and organized and a process must be established in order to identify statewide projects and research recommendations; and

(4) To facilitate the creation of a funding process, a collaborative effort of experts representing all water interests and areas of the state is important to ensure fair and balanced water funding.

Source: Laws 2013, LB517, § 1.
Effective date June 5, 2013.

50-505 Water Funding Task Force; created; members; qualifications; expenses.

(1) The Water Funding Task Force is created. The task force shall consist of the members of the Nebraska Natural Resources Commission and eleven additional members to be appointed by the Governor. The Director of Natural Resources or his or her designee, the chairperson of the Natural Resources Committee of the Legislature or his or her designee, and five additional members of the Legislature appointed by the Executive Board of the Legislative Council shall be nonvoting, ex officio members of the task force. In appointing members to the task force, the Governor:

(a) Shall seek to create a broad-based task force with knowledge of and experience with and representative of Nebraska's water use and economy;

(b) Shall give equal recognition to the importance of both water quantity and water quality;

(c) Shall appoint one member from each of the following categories: Public power; public power and irrigation districts; irrigation districts; a metropolitan utilities district; municipalities; agriculture; wildlife conservation; livestock producers; agribusiness; manufacturing; and outdoor recreation users; and

(d) May solicit and accept nominations for appointments to the task force from recognized water interest groups in Nebraska.

(2) The members of the task force appointed by the Governor shall represent diverse geographic regions of the state, including urban and rural areas. Such members shall be appointed within thirty days after June 5, 2013. Members shall begin serving immediately following notice of appointment. Members 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.

Source: Laws 2013, LB517, § 2.
Effective date June 5, 2013.

50-506 Water Funding Task Force; consultation with other groups; meetings; consultant; termination.

(1) The Water Funding Task Force may consult with other groups in its work, including, but not limited to, the University of Nebraska, the Department of Environmental Quality, the Game and Parks Commission, the United States Army Corps of Engineers, the United States Geological Survey, the United States Fish and Wildlife Service, the United States Bureau of Reclamation, and the Natural Resources Conservation Service of the United States Department of Agriculture.

(2) For administrative and budgetary purposes, the task force shall be housed within the Department of Natural Resources. Additional advisory support may be requested from appropriate federal and state agencies.

(3) The task force may meet as necessary and may hire a consultant or consultants to facilitate the work and meetings of the task force and enter into agreements to achieve the objectives of the task force. The task force may create and use working groups or subcommittees as it deems necessary. Any contracts or agreements entered into under this subsection shall not be subject to the Nebraska Consultants' Competitive Negotiation Act or sections 73-301 to 73-306 or 73-501 to 73-510.

(4) The Water Funding Task Force terminates on December 31, 2013.

Source: Laws 2013, LB517, § 3.
Effective date June 5, 2013.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

50-507 Water Funding Task Force; report; contents.

(1) On or before December 31, 2013, the Water Funding Task Force shall develop and provide a report electronically to the Legislature which contains the following:

(a) Recommendations for a strategic plan which prioritizes programs, projects, and activities in need of funding. The recommendations shall give equal consideration to and be classified into the following categories:

(i) Research, data, and modeling needed to assist the state in meeting its water management goals;

(ii) Rehabilitation or restoration of water supply infrastructure, new water supply infrastructure, or water supply infrastructure maintenance;

(iii) Conjunctive management, storage, and integrated management of ground water and surface water; and

(iv) Compliance with interstate compacts or agreements or other formal state contracts or agreements;

(b) Recommendations for ranking criteria to identify funding priorities based on, but not limited to, the following factors:

(i) The extent to which the program, project, or activity provides increased water productivity and otherwise maximizes the beneficial use of Nebraska's water resources for the benefit of its residents;

(ii) The extent to which the program, project, or activity assists the state in meeting its obligations under interstate compacts or decrees or other formal state contracts or agreements;

(iii) The extent to which the program, project, or activity utilizes objectives described in the Annual Report and Plan of Work for the Nebraska State Water Planning and Review Process issued by the Department of Natural Resources;

(iv) The extent to which the program, project, or activity has been approved for, but has not received, funding through an established state program;

(v) The cost-effectiveness of the program, project, or activity relative to achieving the state's water management goals;

(vi) The extent to which the program, project, or activity contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources; and

(vii) The extent to which the program, project, or activity contributes to multiple water supply management goals, including, but not limited to, flood control, agricultural uses, recreation benefits, wildlife habitat, conservation of water resources, and preservation of water resources for future generations;

(c) Recommendations for legislation on a permanent structure and process through which the programs, projects, or activities described in this section will be provided with funding, including:

(i) A permanent governing board structure and membership;

(ii) An application process;

(iii) A statewide project distribution mechanism; and

(iv) A timeframe for funding allocations based on the list of programs, projects, and activities provided for in this section;

(d) Recommendations for the annual funding amount and the start date for distribution of funds; and

(e) Recommendations for statutory changes relating to regulatory authorities and to funds and programs administered by, and boards and commissions under the direction of, the department, based on the task force's evaluation of the efficiency of such funds, programs, boards, and commissions.

(2) The task force shall make every effort to identify and consult with all water-use stakeholder groups in Nebraska on the development of the recommendations required under sections 50-504 to 50-507.

Source: Laws 2013, LB517, § 4.
Effective date June 5, 2013.

50-508 Water Funding Task Force; funding; Department of Natural Resources; duties.

The Department of Natural Resources shall establish a separate budget subprogram to account for funds appropriated to carry out sections 50-504 to 50-507. No later than February 1, 2014, the department shall notify the Natural Resources Committee of the Legislature and the Appropriations Committee of the Legislature regarding the projected unexpended and uncommitted balance remaining in the separate budget subprogram.

Source: Laws 2013, LB517, § 5.
Effective date June 5, 2013.

ARTICLE 12

LEGISLATIVE PERFORMANCE AUDIT ACT

Section

50-1202 Legislative findings and declarations; purpose of act.

(1) The Legislature hereby finds and declares that pursuant to section 50-402 it is the duty of the Legislative Council to do independent assessments of the performance of state government organizations, programs, activities, and functions in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action.

(2) The purpose of the Legislative Performance Audit Act is to provide for a system of performance audits to be conducted by the office of Legislative Audit as directed by the Legislative Performance Audit Committee.

(3) It is not the purpose of the act to interfere with the duties of the Public Counsel or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogative of any executive state officer, agency, board, bureau, commission, association, society, or institution, except that the act shall not be construed to preclude a performance audit of an agency on the basis that another agency has the same responsibility. The act

shall not be construed to interfere with or supplant the responsibilities or prerogative of the Governor to monitor and report on the performance of the agencies, boards, bureaus, commissions, associations, societies, and institutions under his or her administrative direction.

Source: Laws 1992, LB 988, § 2; Laws 2003, LB 607, § 4; Laws 2013, LB39, § 2.
Effective date September 6, 2013.

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) Office means the office of Legislative Audit;

(9) 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;

(10) Preaudit inquiry means an investigatory process during which the office gathers and examines evidence to determine if a performance audit topic has merit; and

(11) Working papers means those documents containing evidence to support the office's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the office 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; Laws 2013, LB39, § 3.
Effective date September 6, 2013.

50-1204 Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; 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 Auditor shall ensure that performance audit work conducted by the office conforms with performance audit standards contained in the Government Auditing Standards (2011 Revision) as required in section 50-1205.01. The office shall be composed of the Legislative Auditor and other employees of the Legislature employed to conduct performance audits. The office shall be the custodian of all records generated by the committee or office except as provided by section 50-1213, subsection (11) of section 77-2711, or subdivision (10)(a) of section 77-27,119. The office shall inform the Legislative Fiscal Analyst of its activities and consult with him or her as needed. The office 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; Laws 2013, LB39, § 4; Laws 2013, LB40, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB39, section 4, with LB40, section 1, to reflect all amendments.

Note: Changes made by LB40 became effective March 8, 2013. Changes made by LB39 became effective September 6, 2013.

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 office, 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 electronically to the Clerk of 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 office and assist in presenting budget requests to the Appropriations Committee of the Legislature;

(15) Approve or reject, within the budgetary limits of the office, 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 office 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; Laws 2012, LB782, § 78; Laws 2013, LB39, § 5; Laws 2013, LB222, § 19.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB39, section 5, with LB222, section 19, to reflect all amendments.

Note: Changes made by LB222 became effective May 8, 2013. Changes made by LB39 became effective September 6, 2013.

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 (2011 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; Laws 2013, LB40, § 2. Effective date March 8, 2013.

50-1208 Performance audit; committee; duties; office; 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 office 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 office 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 office.

(4) After the entrance conference, the office 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 office.

(5) Once the committee has adopted a scope statement, the office 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 office'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; Laws 2013, LB39, § 6.
Effective date September 6, 2013.

50-1209 Performance audit; notification of agency.

Upon approval of an audit plan pursuant to section 50-1208, the agency shall be notified in writing of the specific scope of the audit and the projected deadline for completion of the office's report. If the office needs information from a political subdivision or entity thereof to effectively conduct a performance audit of an agency, the political subdivision or entity thereof shall provide information, on request, to the office.

Source: Laws 1992, LB 988, § 9; Laws 2003, LB 607, § 12; Laws 2013, LB39, § 7.
Effective date September 6, 2013.

50-1210 Report of findings and recommendations; distribution; confidentiality; agency response.

(1) Upon completion of a performance audit, the office shall prepare a report of its findings and recommendations for action. The Legislative Auditor shall provide the office's report concurrently to the committee, agency director, and Legislative Fiscal Analyst. The report submitted to the committee and the Legislative Fiscal Analyst shall be submitted electronically. The committee may, by majority vote, release the office'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 office'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 office's report or recommendations.

Source: Laws 1992, LB 988, § 10; Laws 2003, LB 607, § 13; Laws 2006, LB 956, § 9; Laws 2012, LB782, § 79; Laws 2013, LB39, § 8. Effective date September 6, 2013.

50-1211 Committee; review materials; reports; public hearing; procedure.

(1) The committee shall review the office'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 office'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 office'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 report submitted to the members of the Legislature shall be submitted electronically. 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; Laws 2012, LB782, § 80; Laws 2013, LB39, § 9. Effective date September 6, 2013.

50-1213 Office; access to information and records; prohibited acts; penalty; proceedings; not reviewable by court; committee or office employee; privilege; working papers; not public records.

(1) The office shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, unless the office 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 office 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 office shall remain confidential and shall not be shared by an employee of the office with any person who is not an employee of the office, including any member of the committee. If necessary for the conduct of the performance audit, the office may discuss or share confidential information with the chairperson of the committee. If a dispute arises between the office 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 office 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 office employee acting at the direction of the committee shall be reviewable in any court. No member of the committee or office 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 office 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 office 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 office.

Source: Laws 1992, LB 988, § 13; Laws 2003, LB 607, § 16; Laws 2006, LB 588, § 5; Laws 2013, LB39, § 10.
Effective date September 6, 2013.

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 office or committee.

No employee of the State of Nebraska who provides information to the committee or office 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; Laws 2013, LB39, § 11.
Effective date September 6, 2013.

CHAPTER 52
LIENS

Article.
19. Nonconsensual Common-Law Liens. 52-1901 to 52-1907.
20. Homeowners' Association. 52-2001.
21. Commercial Real Estate Broker Lien Act. 52-2101 to 52-2108.

ARTICLE 19
NONCONSENSUAL COMMON-LAW LIENS

Section
52-1901. Nonconsensual common-law lien, defined.
52-1902. Transferred to section 52-1907.
52-1905. Nonconsensual common-law lien; how treated.
52-1906. Recording of nonconsensual common-law lien; claimant; serve copy upon owner; sheriff; duties; proceeding to enforce; time limit.
52-1907. Submission for filing or recording; liability.

52-1901 Nonconsensual common-law lien, defined.

For purposes of sections 52-1901 to 52-1907, nonconsensual common-law lien means a document that purports to assert a lien against real or personal property of any person or entity and:

(1) Is not expressly provided for by a specific state or federal statute;

(2) Does not depend on the consent of the owner of the real or personal property affected; and

(3) Is not an equitable or constructive lien imposed by a state or federal court of competent jurisdiction.

Source: Laws 2003, LB 655, § 1; Laws 2013, LB3, § 3.
Effective date May 17, 2013.

52-1902 Transferred to section 52-1907.

52-1905 Nonconsensual common-law lien; how treated.

A nonconsensual common-law lien is not binding or enforceable at law or in equity. Any nonconsensual common-law lien that is recorded is void and unenforceable.

Source: Laws 2013, LB3, § 4.
Effective date May 17, 2013.

52-1906 Recording of nonconsensual common-law lien; claimant; serve copy upon owner; sheriff; duties; proceeding to enforce; time limit.

In order that the owner of real property upon which a nonconsensual common-law lien is recorded shall have notice of the recording of the lien, the claimant shall cause the sheriff to serve a copy of the recorded lien upon the owner of the real property upon which the nonconsensual common-law lien is recorded and the sheriff shall make return thereof without delay by filing proof

of service with the register of deeds as provided in subsection (1) of section 25-507.01. There shall be no filing fee for filing the proof of service. A judicial proceeding to enforce a nonconsensual common-law lien shall be instituted by the claimant within ten days after recording the lien. Failure to serve a copy of the recorded lien upon the owner or failure to file a judicial proceeding to enforce the lien shall cause the lien to lapse and be of no legal effect.

Source: Laws 2013, LB3, § 5.
Effective date May 17, 2013.

52-1907 Submission for filing or recording; liability.

If a person submits for filing or recording to the Secretary of State, county clerk, register of deeds, or clerk of any court any document purporting to create a nonconsensual common-law lien against real or personal property in violation of sections 52-1901 and 52-1905 to 52-1907 or section 76-296 and such document is so filed or recorded, the claimant submitting the document is liable to the person or entity against whom the lien is claimed for actual damages plus costs and reasonable attorney's fees.

Source: Laws 2003, LB 655, § 2; R.S.1943, (2010), § 52-1902; Laws 2013, LB3, § 6.
Effective date May 17, 2013.

ARTICLE 20

HOMEOWNERS' ASSOCIATION

Section
52-2001. Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement; restrictions on lien; payments to escrow account; use.

52-2001 Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners' association; furnish statement; restrictions on lien; payments to escrow account; use.

(1) A homeowners' association has a lien on a member's real estate for any assessment levied against real estate from the time the assessment 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, 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 notice required under subsection (1) of this section has been recorded for a delinquent assessment for which enforcement is sought, 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) The homeowners' association declaration, agreements, bylaws, rules, or regulations may not provide that a lien on a member's real estate for any assessment levied against real estate relates back to the date of filing of the declaration or that such lien takes priority over any mortgage or deed of trust on real estate recorded subsequent to the filing of the declaration and prior to the recording by the association of the notice required under subsection (1) of this section.

(9) In the event of a conflict between the provisions of the declaration and the bylaws, rules, or regulations or any other agreement of the homeowners' association, the declaration prevails except to the extent the declaration is inconsistent with this section.

(10)(a) The homeowners' association may require a person who purchases restricted real estate on or after September 6, 2013, to make payments into an escrow account established by the homeowners' association until the balance in the escrow account for that restricted real estate is in an amount not to exceed six months of assessments.

(b) All payments made under this subsection and received on or after September 6, 2013, shall be held in an interest-bearing checking account in a bank, savings bank, building and loan association, or savings and loan association in this state under terms that place these payments beyond the claim of creditors of the homeowners' association. Upon request by an owner of restricted real estate, the homeowners' association shall disclose the name of the financial institution and the account number where the payments made under this subsection are being held. The homeowners' association may maintain a single escrow account to hold payments made under this subsection from all of the owners of restricted real estate. If a single escrow account is maintained, the homeowners' association shall maintain separate accounting records for each owner of restricted real estate.

(c) The payments made under this subsection may be used by the homeowners' association to satisfy any assessments attributable to an owner of

restricted real estate for which assessment payments are delinquent. To the extent that the escrow deposit or any part thereof is applied to offset any unpaid assessments of an owner of restricted real estate, the homeowners' association may require such owner to replenish the escrow deposit.

(d) The homeowners' association shall return the payments made under this subsection, together with any interest earned on such payments, to the owner of restricted real estate when the owner sells the restricted real estate and has fully paid all assessments.

(e) Nothing in this subsection shall prohibit the homeowners' association from establishing escrow deposit requirements in excess of the amounts authorized in this subsection pursuant to provisions in the homeowners' association's declaration.

(11) 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 co-owners association organized under the Condominium Property Act or 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; Laws 2013, LB442, § 1.
Effective date September 6, 2013.

Cross References

Condominium Property Act, see section 76-801.
Nebraska Condominium Act, see section 76-825.

ARTICLE 21

COMMERCIAL REAL ESTATE BROKER LIEN ACT

Section
52-2101. Act, how cited.
52-2102. Terms, defined.
52-2103. Lien; amount; attachment; when; notice of lien; recording; notice of lien for future commission; how treated.
52-2104. Notice of lien; mailing of notice required; effect on lien.
52-2105. Notice of lien; contents.
52-2106. Lien; period of enforceability.

Section
52-2107. Priority of liens.
52-2108. Release of lien; procedure; escrow established or interpleader filed; recording of document required; failure to file; additional procedures.

52-2101 Act, how cited.

Sections 52-2101 to 52-2108 shall be known and may be cited as the Commercial Real Estate Broker Lien Act.

Source: Laws 2013, LB3, § 7.
Effective date May 17, 2013.

52-2102 Terms, defined.

For purposes of the Commercial Real Estate Broker Lien Act:

(1) Commercial real estate means any real estate other than real estate containing no more than four residential units or real estate on which no buildings or structures are located and that is zoned for single-family residential use. Commercial real estate does not include single-family residential units such as condominiums, townhouses, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even though these units may be a part of a larger building or parcel of real estate containing more than four residential units;

(2) Commission means any and all compensation that may be due a commercial real estate broker for performance of licensed services; and

(3) Commission agreement means a written agreement with a designated commercial real estate broker as required by subsections (2) through (6) of section 76-2422.

Source: Laws 2013, LB3, § 8.
Effective date May 17, 2013.

52-2103 Lien; amount; attachment; when; notice of lien; recording; notice of lien for future commission; how treated.

(1)(a) A commercial real estate broker shall have a lien upon commercial real estate or any interest in that commercial real estate that is the subject of a purchase, lease, or other conveyance to a buyer or tenant of an interest in the commercial real estate in the amount of commissions that the commercial real estate broker is due.

(b) The lien shall be available only to the commercial real estate broker named in a commission agreement signed by an owner or buyer or their respective authorized agents as applicable and is not available to an employee, agent, subagent, or independent contractor of a commercial real estate broker.

(2) A lien under this section shall attach to commercial real estate or any interest in the commercial real estate when:

(a) The commercial real estate broker is entitled to a commission provided in a commission agreement signed by the owner, buyer, or their respective authorized agents, as applicable; and

(b) The commercial real estate broker records a notice of lien in the office of the register of deeds of the county in which the commercial real estate is located, prior to the actual conveyance or transfer of the commercial real estate against which the commercial real estate broker is claiming a lien, except as

provided in this section. The lien shall attach as of the date of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

(3) In the case of a lease, including a sublease or an assignment of a lease, the notice of lien shall be recorded not later than ninety days after the tenant takes possession of the leased premises. The lien shall attach as of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

(4)(a) If a commercial real estate broker is due an additional commission as a result of future actions, including, but not limited to, the exercise of an option to expand the leased premises or to renew or extend a lease pursuant to a commission agreement signed by the then owner, the commercial real estate broker may record its notice of lien at any time after execution of the lease or other commission agreement which contains such option, but not later than ninety days after the event or occurrence on which the future commission is claimed occurs.

(b) In the event that the commercial real estate is sold or otherwise conveyed prior to the date on which a future commission is due, and if the commercial real estate broker has filed a valid notice of lien prior to the sale or other conveyance of the commercial real estate, then the purchaser or transferee shall be deemed to have notice of and shall take title to the commercial real estate subject to the notice of lien. If a commercial real estate broker claiming a future commission fails to record its notice of lien for future commission prior to the recording of a deed conveying legal title to the commercial real estate to the purchaser or transferee, then such commercial real estate broker shall not claim a lien on the commercial real estate. This subsection shall not limit or otherwise affect claims or defenses a commercial real estate broker or owner or any other party may have on any other basis, in law or in equity.

(5) If a commercial real estate broker has a commission agreement as described in subdivision (4)(a) of this section with a prospective buyer, then the lien shall attach upon the prospective buyer purchasing or otherwise accepting a conveyance or transfer of the commercial real estate and the recording of a notice of lien by the commercial real estate broker in the office of the register of deeds of the county in which the commercial real estate, or any interest in the commercial real estate, is located, within ninety days after the purchase or other conveyance or transfer to the buyer or tenant. The lien shall attach as of the date of the recording of the notice of lien and shall not relate back to the date of the commission agreement.

Source: Laws 2013, LB3, § 9.
Effective date May 17, 2013.

52-2104 Notice of lien; mailing of notice required; effect on lien.

The commercial real estate broker shall, within ten days after recording its notice of lien, either mail a copy of the notice of lien to the owner of record of the commercial real estate by registered or certified mail at the address of the owner stated in the commission agreement on which the claim for lien is based or, if no such address is given, then to the address of the commercial real estate on which the claim of lien is based. Mailing of the copy of the notice of lien is effective when deposited in a United States mailbox with postage prepaid. The commercial real estate broker's lien shall be unenforceable if mailing or service

of the copy of notice of lien does not occur at the time and in the manner required by this section.

Source: Laws 2013, LB3, § 10.
Effective date May 17, 2013.

52-2105 Notice of lien; contents.

The notice of lien shall state the name of the commercial real estate broker, the name as reflected in the commercial real estate broker's records of any person the commercial real estate broker believes to be an owner of the commercial real estate on which the lien is claimed, the name as reflected in the commercial real estate broker's records of any person whom the commercial real estate broker believes to be obligated to pay the commission under the commission agreement, a description legally sufficient for identification of the commercial real estate upon which the lien is claimed, and the amount for which the lien is claimed. The notice of lien shall recite that the information contained in the notice is true and accurate to the knowledge of the signatories. The notice of lien shall be signed by the commercial real estate broker or by a person authorized to sign on behalf of the commercial real estate broker and shall be notarized.

Source: Laws 2013, LB3, § 11.
Effective date May 17, 2013.

52-2106 Lien; period of enforceability.

(1) Except as provided in subsections (2) and (3) of this section, a lien that has become enforceable as provided in section 52-2103 shall continue to be enforceable for two years after the recording of the lien.

(2) Except as provided in subsection (3) of this section, if an owner, holder of a security interest, mortgage, or trust deed, or other person having an interest in the commercial real estate gives the commercial real estate broker written demand to institute a judicial proceeding within thirty days, the lien lapses unless, within thirty days after receipt of the written demand, the commercial real estate broker institutes judicial proceedings.

(3) If a judicial proceeding to enforce a lien is instituted while a lien is effective under subsection (1) or (2) of this section, the lien continues during the pendency of the proceeding.

Source: Laws 2013, LB3, § 12.
Effective date May 17, 2013.

52-2107 Priority of liens.

(1) Recorded liens, mortgages, trust deeds, and other encumbrances on commercial real estate, including a recorded lien securing revolving credit and future advances for a loan, recorded before the date the commercial real estate broker's lien is recorded, shall have priority over the commercial real estate broker's lien.

(2) A construction lien claim that is recorded after the commercial real estate broker's notice of lien but that relates back to a date prior to the recording date of the commercial real estate broker's notice of lien has priority over the commercial real estate broker's lien.

(3) A purchase-money lien executed by the buyer of commercial real estate in connection with a loan for which any part of the proceeds are used to pay the purchase price of the commercial real estate has priority over a commercial real estate broker's lien claimed for the commission owed by the buyer against the commercial real estate purchased by the buyer.

Source: Laws 2013, LB3, § 13.
Effective date May 17, 2013.

52-2108 Release of lien; procedure; escrow established or interpleader filed; recording of document required; failure to file; additional procedures.

(1) Whenever a notice of a commercial real estate broker's lien has been recorded, the record owner of the commercial real estate may have the lien released by depositing funds equal to the full amount stated in the notice of lien plus fifteen percent to be applied towards any lien under section 52-2103. These funds shall be held in escrow by such person and by such process which may be agreed to by the parties, either in the commission agreement or otherwise, for the payment to the commercial real estate broker or otherwise for resolution for their dispute or, in the absence of any such mutually agreed person or process, the funds may be deposited with the district court by the filing of an interpleader. Upon such deposit of funds by interpleader, the commercial real estate shall be considered released from such lien or claim of lien. Upon written notice to the commercial real estate broker that the funds have been escrowed or an interpleader filed, the commercial real estate broker shall, within ten business days, record in the office of the register of deeds where the notice of commercial real estate broker's lien was filed pursuant to section 52-2103 a document stating that the lien is released and the commercial real estate released by an escrow established pursuant to this section or by interpleader. If the commercial real estate broker fails to file such document, the person holding the funds may sign and file such document and deduct from the escrow the reasonable cost of preparing and filing the document. Upon the filing of such document, the commercial real estate broker shall be deemed to have an equitable lien on the escrow funds pending a resolution of the commercial real estate broker's claim for payment and the funds shall not be paid to any person, except for such payment to the holder of the funds as set forth in this section, until a resolution of the commercial real estate broker's claim for payment has been agreed to by all necessary parties or ordered by a court having jurisdiction.

(2) Except as otherwise provided in this section, whenever a commercial real estate broker's lien has been recorded and an escrow account is established either from the proceeds from the transaction, conveyance, or any other source of funds computed as one hundred fifteen percent of the amount of the claim for lien, then the lien against the commercial real estate shall be extinguished and immediately become a lien on the funds contained in the escrow account. The requirement to establish an escrow account, as provided in this section, shall not be cause for any party to refuse to complete or close the transaction.

Source: Laws 2013, LB3, § 14.
Effective date May 17, 2013.

CHAPTER 53
LIQUORS

Article.
1. Nebraska Liquor Control Act.
   (c) Nebraska Liquor Control Commission; General Powers. 53-117 to 53-117.06.
   (d) Licenses; Issuance and Revocation. 53-123.15 to 53-124.01.
   (f) Tax. 53-162.
   (i) Prohibited Acts. 53-180.06.
3. Nebraska Grape and Winery Board. 53-304.

ARTICLE 1
NEBRASKA LIQUOR CONTROL ACT

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

Section
53-117. Powers, functions, and duties.
53-117.03. Employee and management training; commission; powers and duties; fees; certification.
53-117.06. Nebraska Liquor Control Commission Rule and Regulation Cash Fund; created; use; investment.

(d) LICENSES; ISSUANCE AND REVOCATION

53-123.15. Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action; holder of license; duties; report; contents.
53-124. Licenses; types; classification; fees; where paid; license year.
53-124.01. Fees for annual licenses.

(f) TAX

53-162. Alcoholic liquor shipped from another state; tax imposed.

(i) PROHIBITED ACTS

53-180.06. Documentary proof of age; separate book; record; contents.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

53-117 Powers, functions, and duties.

The commission has the following powers, functions, and duties:

(1) To receive applications for and to issue licenses to and suspend, cancel, and revoke licenses of manufacturers, wholesalers, nonbeverage users, retailers, railroads including owners and lessees of sleeping, dining, and cafe cars, airlines, and boats in accordance with the Nebraska Liquor Control Act;

(2) To fix by rules and regulations the standards of manufacture of alcoholic liquor not inconsistent with federal laws in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof and to adopt and promulgate rules and regulations not inconsistent with federal laws for the proper labeling of containers, barrels, casks, or other bulk containers or of bottles of alcoholic liquor manufactured or sold in this state. The Legislature intends, by the grant of power to adopt and promulgate rules and regulations, that the commission have broad discretionary powers to govern the traffic in alcoholic liquor and to enforce strictly all provisions of the act in the interest of

sanitation, purity of products, truthful representations, and honest dealings in a manner that generally will promote the public health and welfare. All such rules and regulations shall be absolutely binding upon all licensees and enforceable by the commission through the power of suspension or cancellation of licenses, except that all rules and regulations of the commission affecting a club possessing any form of retail license shall have equal application to all such licenses or shall be void;

(3) To call upon other administrative departments of the state, county and municipal governments, county sheriffs, city police departments, village marshals, peace officers, and prosecuting officers for such information and assistance as the commission deems necessary in the performance of its duties. The commission shall enter into an agreement with the Nebraska State Patrol in which the Nebraska State Patrol shall hire six new patrol officers and, from the entire Nebraska State Patrol, shall designate a minimum of six patrol officers who will spend a majority of their time in administration and enforcement of the Nebraska Liquor Control Act;

(4) To recommend to local governing bodies rules and regulations not inconsistent with law for the distribution and sale of alcoholic liquor throughout the state;

(5) To inspect or cause to be inspected any premises where alcoholic liquor is manufactured, distributed, or sold and, when sold on unlicensed premises or on any premises in violation of law, to bring an action to enjoin the use of the property for such purpose;

(6) To hear and determine appeals from orders of a local governing body in accordance with the act;

(7) To conduct or cause to be conducted an audit to inspect any licensee's records and books;

(8) In the conduct of any hearing or audit authorized to be held by the commission (a) to examine or cause to be examined, under oath, any licensee and to examine or cause to be examined the books and records of such licensee, (b) to hear testimony and take proof material for its information in the discharge of its duties under the act, and (c) to administer or cause to be administered oaths;

(9) To investigate the administration of laws in relation to alcoholic liquor in this and other states and to recommend to the Governor and through him or her to the Legislature amendments to the act; and

(10) To receive, account for, and remit to the State Treasurer state license fees and taxes provided for in the act.

Source: Laws 1935, c. 116, § 16, p. 382; C.S.Supp.,1941, § 53-316; R.S.1943, § 53-117; Laws 1959, c. 245, § 1, p. 842; Laws 1965, c. 318, § 4, p. 891; Laws 1967, c. 332, § 1, p. 879; Laws 1974, LB 681, § 4; Laws 1980, LB 848, § 2; Laws 1981, LB 545, § 15; Laws 1988, LB 1089, § 6; Laws 1989, LB 781, § 4; Laws 1991, LB 344, § 11; Laws 1993, LB 183, § 5; Laws 1999, LB 267, § 5; Laws 2004, LB 485, § 6; Laws 2013, LB579, § 1.
Effective date September 6, 2013.

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 administrative costs, including salary and benefits, 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 administrative costs, including salary and benefits, 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; Laws 2013, LB199, § 22.
Effective date May 26, 2013.

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 administrative costs, including salary and benefits, 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; Laws 2013, LB199, § 23.
Effective date May 26, 2013.

Cross References

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

(d) LICENSES; ISSUANCE AND REVOCATION

53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action; holder of license; duties; report; contents.

(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 manufacturer who sells and ships alcoholic liquor from another state directly to a consumer in this state if the manufacturer satisfies the requirements of subsections (7) through (9) of this section. A manufacturer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacture direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The commission may issue a shipping license to any retailer who is licensed within or outside Nebraska, who is authorized to sell alcoholic liquor at retail in the state of domicile of the retailer, and who is not a manufacturer if such retailer satisfies the requirements of subsections (7) through (9) of this section to ship alcoholic liquor from another state directly to a consumer in this state. A retailer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a retail direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(6) The application for a shipping license under subsection (2) or (3) of this section 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 sections 53-162 and 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 suspend, cancel, or revoke such shipping license for such period of time as it may determine.

(7) The application for a shipping license under subsection (4) or (5) of this section shall be in such form as the commission prescribes. The application shall require an applicant which is a manufacturer, a craft brewery, a craft distillery, or a farm winery to identify the brands of alcoholic liquor that the applicant is requesting the authority to ship either into or within Nebraska. For all applicants, unless otherwise provided in this section, 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 or retailers 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 sections 53-162 and 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;

(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 or retailers, the commission may suspend, cancel, or revoke such shipping license for such period of time as it may determine;

(d) That the applicant agrees to notify the commission of any violations in the state in which he or she is domiciled and any violations of the direct shipping laws of any other states. Failure to notify the commission within thirty days after such a violation may result in a hearing before the commission pursuant to which the license may be suspended, canceled, or revoked; and

(e) That the applicant, if a manufacturer, craft brewery, craft distillery, or farm winery, agrees to notify any wholesaler licensed in Nebraska that has been authorized to distribute such brands that the application has been filed for a shipping license. The notice shall be in writing and in a form prescribed by the commission. The commission may adopt and promulgate rules and regulations as it reasonably deems necessary to implement this subdivision, including rules and regulations that permit the holder of a shipping license under this subdivision to amend the shipping license by, among other things, adding or deleting any brands of alcoholic liquor identified in the shipping license.

(8) Any manufacturer or retailer who is granted a shipping license under subsection (4) or (5) of this section shall:

(a) Only ship the brands of alcoholic liquor identified on the application;

(b) Only ship alcoholic liquor that is owned by the holder of the shipping license;

(c) Only ship alcoholic liquor that is properly registered with the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury;

(d) Not ship any alcoholic liquor products that the manufacturers or wholesalers licensed in Nebraska have voluntarily agreed not to bring into Nebraska at the request of the commission;

(e) Not ship more than nine liters of alcoholic liquor per month to any person in Nebraska to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale; and

(f) Cause the direct shipment of alcoholic liquor to be by approved common carrier only. The commission shall adopt and promulgate rules and regulations pursuant to which common carriers may apply for approval to provide common carriage of alcoholic liquor shipped by a holder of a shipping license issued pursuant to subsection (4) or (5) of this section. The rules and regulations shall include provisions that require (i) the recipient to demonstrate, upon

delivery, that he or she is at least twenty-one years of age, (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the commission, and (iii) the commission-approved common carrier to submit to the commission such information as the commission may prescribe. The commission-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of twenty-one years and refuses to present valid identification. All holders of shipping licenses shipping alcoholic liquor pursuant to this subdivision shall affix a conspicuous notice in sixteen-point type or larger to the outside of each package of alcoholic liquor shipped within or into the State of Nebraska, in a conspicuous location, stating: CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY. Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the holder of the shipping license shall be liable only for their independent acts.

(9) For purposes of sections 53-160, 77-2703, and 77-27,142, each shipment of alcoholic liquor by the holder of a shipping license under subsection (3), (4), or (5) of this section shall constitute a sale in Nebraska by establishing a nexus in the state. The holder of the shipping license shall collect all the taxes due to the State of Nebraska and any political subdivision and remit any excise taxes monthly to the commission and any sales taxes to the Department of Revenue.

(10) By July 1, 2014, the commission shall report to the General Affairs Committee of the Legislature the number of shipping licenses issued for license years 2013-14 and 2014-15. The report shall be made electronically.

Source: Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14; Laws 2007, LB441, § 1; Laws 2010, LB861, § 55; Laws 2010, LB867, § 1; Laws 2011, LB286, § 1; Laws 2013, LB230, § 1. Effective date September 6, 2013.

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 four types of shipping licenses as described in section 53-123.15: Manufacturers, vintage wines, manufacture direct sales, and retail 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 53, § 3; Laws 1993, LB 183, § 9; 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; Laws 2013, LB230, § 2.
Effective date September 6, 2013.

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
Manufacture direct sales	500
Retail direct sales	500

(10) Wholesale license:

Class	Fee - In Dollars
Alcoholic liquor	750
Beer	500

Source: Laws 2010, LB861, § 57; Laws 2013, LB230, § 3.
Effective date September 6, 2013.

(f) TAX

53-162 Alcoholic liquor shipped from another state; tax imposed.

For the purpose of raising revenue, a tax is imposed upon persons holding a shipping license issued pursuant to subsection (4) or (5) of section 53-123.15 who ship alcoholic liquor to individuals pursuant to section 53-192 and for which the required taxes in the state of purchase or this state have not been paid. The tax, if due, shall be paid by the holder of the shipping license issued pursuant to subsection (4) or (5) of section 53-123.15. The amount of the tax shall be imposed as provided in section 53-160. The tax shall be collected by the commission, except that the tax shall not be due until December 31 of the year in which the purchase was made. The tax shall be delinquent if unpaid within twenty-five days after December 31. The revenue from the tax shall be credited to the General Fund. The commission shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2000, LB 973, § 2; Laws 2001, LB 671, § 3; Laws 2013, LB230, § 4.
Effective date September 6, 2013.

(i) PROHIBITED ACTS

53-180.06 Documentary proof of age; separate book; record; contents.

(1) To establish proof of age for the purpose of purchasing or consuming alcoholic liquor, a person shall present or display only a valid driver's or operator's license, state identification card, military identification card, alien registration card, or passport.

(2) Every holder of a retail license may maintain, in a separate book, a record of each person who has furnished documentary proof of age for the purpose of

making any purchase of alcoholic liquor. The record shall show the name and address of the purchaser, the date of the purchase, and a description of the identification used and shall be signed by the purchaser.

Source: Laws 1969, c. 437, § 1, p. 1467; Laws 1991, LB 454, § 2; Laws 1999, LB 267, § 14; Laws 2013, LB173, § 1.
Effective date March 8, 2013.

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.

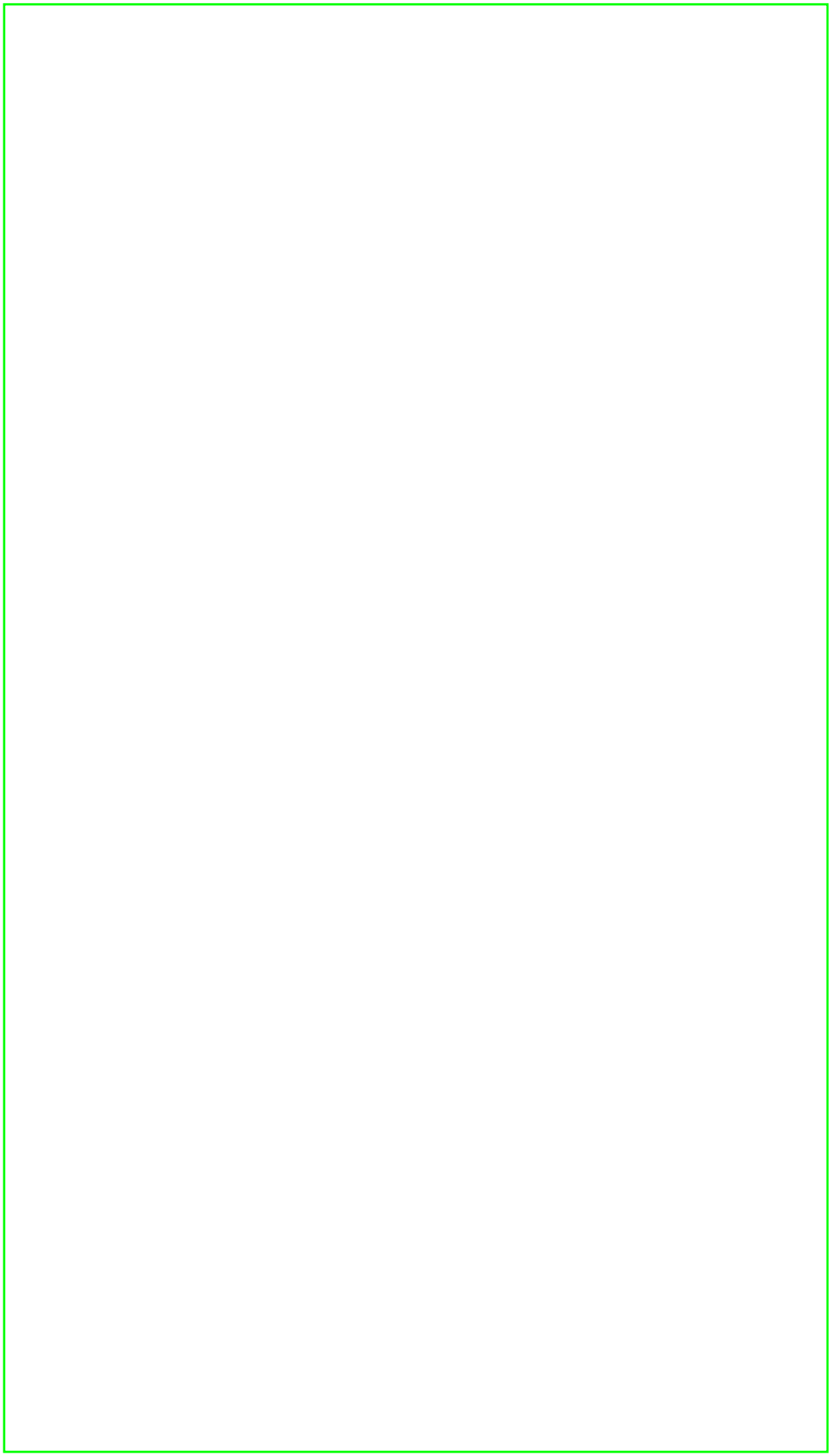
Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) or (5) 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; Laws 2013, LB230, § 5.
Effective date September 6, 2013.

Cross References

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



CHAPTER 54
LIVESTOCK

Article.
1. Livestock Brand Act. 54-170 to 54-1,128.
7. Protection of Health.
(d) General Provisions. 54-742.
(f) Import Control. 54-784.01, 54-789.
9. Livestock Animal Welfare Act. 54-901 to 54-913.
11. Livestock Auction Market Act. 54-1158 to 54-1172.

ARTICLE 1
LIVESTOCK BRAND ACT

Section
54-170. Act, how cited.
54-171. Definitions; where found.
54-186.01. Out-of-state brand permit, defined.
54-1,128. Brand with brand recorded or registered in another state; application for out-of-state brand permit; contents; fee.

54-170 Act, how cited.

Sections 54-170 to 54-1,128 shall be known and may be cited as the Livestock Brand Act.

Source: Laws 1999, LB 778, § 1; Laws 2000, LB 213, § 3; Laws 2013, LB435, § 1.
Effective date September 6, 2013.

54-171 Definitions; where found.

For purposes of the Livestock Brand Act, the definitions found in sections 54-172 to 54-190 shall be used.

Source: Laws 1999, LB 778, § 2; Laws 2013, LB435, § 2.
Effective date September 6, 2013.

54-186.01 Out-of-state brand permit, defined.

Out-of-state brand permit means an authorization for a one-time use of a brand registered with a state other than Nebraska to brand cattle imminently being exported out of Nebraska.

Source: Laws 2013, LB435, § 3.
Effective date September 6, 2013.

54-1,128 Brand with brand recorded or registered in another state; application for out-of-state brand permit; contents; fee.

(1) An owner may brand cattle with a brand recorded or registered in another state when:

(a) Cattle are purchased at a livestock auction market licensed under the Livestock Auction Market Act or congregated at another location approved by the Nebraska Brand Committee;

(b) The cattle will be imminently exported from Nebraska;

(c) The cattle are branded at the livestock auction market or other approved location; and

(d) An out-of-state brand permit has been obtained prior to branding the cattle.

(2) An application for an out-of-state brand permit shall be made to a brand inspector and shall include a description of the brand, a written application, and a fee not to exceed fifty dollars as determined by the Nebraska Brand Committee. A brand inspector shall evaluate and may approve an out-of-state brand permit within a reasonable period of time.

(3) Cattle branded under an out-of-state brand permit shall remain subject to all other brand inspection requirements under the Livestock Brand Act.

Source: Laws 2013, LB435, § 4.
Effective date September 6, 2013.

Cross References

Livestock Auction Market Act, see section 54-1156.

ARTICLE 7
PROTECTION OF HEALTH

(d) GENERAL PROVISIONS

(f) IMPORT CONTROL

(d) GENERAL PROVISIONS

54-742 Diseased animals; duty to report; livestock disease reporting system; animal infected with bovine trichomoniasis; report required; notice to adjacent landowner or land manager; form or affidavit submitted to department; department; duties; costs.

(1) It is the duty of any person who discovers, suspects, or has reason to believe that any animal belonging to him or her or which he or she has in his or her possession or custody or which, belonging to another, may come under his or her observation is affected with any dangerous, infectious, contagious, or otherwise transmissible disease which affects livestock to immediately report such fact, belief, or suspicion to the department or to any agent, employee, or appointee thereof.

(2) The department shall work together with livestock health committees, livestock groups, diagnostic laboratories, practicing veterinarians, producers,

and others who may be affected, to adopt and promulgate rules and regulations to effectuate a workable livestock disease reporting system according to the provisions of this section. The rules and regulations shall establish who shall report diseases, what diseases shall be reported, how such diseases shall be reported, to whom diseases shall be reported, the method by which diseases shall be reported, and the frequency of reports required. For disease reporting purposes, the department shall categorize livestock diseases according to relative economic or health risk factors and may provide different reporting measures for the various categories.

(3) Any person who reasonably suspects that any beef or dairy breeding bull belonging to him or her or which he or she has in his or her possession or custody is infected with bovine trichomoniasis shall not sell or transport such animal, except for consignment directly to a federally recognized slaughter establishment, unless such person causes such animal to be tested for bovine trichomoniasis. Any person who owns or has possession or custody of a beef or dairy breeding bull, or who has a beef or dairy breeding bull belonging to another under his or her observation, for which a laboratory confirmed diagnosis of bovine trichomoniasis has been made, shall report such diagnosis to the department within five business days after receipt of the laboratory confirmation. Any such breeding bull for which a laboratory confirmation of bovine trichomoniasis has been made shall not be sold or transported except for consignment directly to a federally recognized slaughter establishment.

(4)(a) An owner or manager of any beef or dairy breeding bull for which a laboratory confirmed diagnosis of bovine trichomoniasis has been made shall notify each adjacent landowner or land manager of the diagnosis if such land is capable of maintaining livestock susceptible to bovine trichomoniasis. Such notification shall be made to each landowner or land manager within fourteen days after the diagnosis even if cattle are not currently maintained on the owner's or manager's land.

(b) The owner or manager of the cattle shall submit to the department a form or affidavit attesting to the fact that the notification required under this subsection has occurred. The form or affidavit shall be submitted to the department within fourteen days after the diagnosis and shall include the names of adjacent landowners or land managers who were notified and their contact information.

(c) If an owner or manager does not, within such fourteen-day period, submit the form or affidavit indicating that adjacent landowners or land managers have been notified as required under this subsection, the department shall notify each adjacent landowner or land manager of the diagnosis. The department shall assess the administrative costs of the department to notify the adjacent landowners or land managers against the owner or manager that failed to comply with this subsection. The department shall determine the definition of adjacent based on the disease characteristics and modes of transmission. The department shall remit any administrative costs collected under this subsection to the State Treasurer for credit to the Nebraska Agricultural Products Marketing Cash Fund.

Source: Laws 1927, c. 12, art. VIII, § 1, p. 92; C.S.1929, § 54-938; R.S.1943, § 54-742; Laws 1993, LB 267, § 7; Laws 2001, LB 438, § 7; Laws 2013, LB423, § 4.
Effective date September 6, 2013.

Cross References

Definitions for sections 54-742 to 54-753.05, see section 54-701.03.

(f) IMPORT CONTROL

54-784.01 Act, how cited.

Sections 54-784.01 to 54-796 shall be known and may be cited as the Animal Importation Act.

Source: Laws 1992, LB 366, § 13; Laws 2013, LB647, § 1.
Effective date September 6, 2013.

54-789 Individual identification of cattle; Department of Agriculture; powers; State Veterinarian; powers.

(1) Except as otherwise provided in this section, individual identification of cattle imported into Nebraska shall not be required if (a) the cattle are identified by a registered brand and accompanied by an official brand inspection certificate issued by the recognized brand inspection authority of the state of origin and (b) such cattle are imported directly from a mandatory brand inspection area of any state.

(2) The Department of Agriculture may require cattle imported into Nebraska to be identified by individual identification to enter the state if the Director of Agriculture determines that:

(a) The state of origin recognized brand registration or brand inspection procedures and documentation are insufficient to enable the tracing of individual animals to the animal's herd of origin;

(b) Identification by brand alone is in conflict with a standard of federal law or regulation regarding identification of cattle moved into Nebraska; or

(c) The cattle originate from a location that is not a tuberculosis accredited-free state or zone pursuant to 9 C.F.R. 77.7 or is not designated a brucellosis Class Free or Class A state or area pursuant to 9 C.F.R. 78.41, as such regulations existed on January 1, 2013.

(3) At no time shall a registered brand inspection certificate be used in lieu of a certificate of veterinary inspection.

(4) This section does not limit the authority of the State Veterinarian to issue import orders imposing additional requirements for animals imported into Nebraska from any state, country, zone, or other area, including requirements relating to identification.

(5) For purposes of this section:

(a) Individual identification means a device or method approved by the Department of Agriculture of uniquely identifying a specific animal to its herd of origin and is not synonymous with official identification; and

(b) Official identification means identifying an animal or group of animals using devices or methods approved by the Veterinary Services Office of the Animal and Plant Health Inspection Service of the United States Department of Agriculture, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority.

Source: Laws 2013, LB647, § 2.
Effective date September 6, 2013.

ARTICLE 9
LIVESTOCK ANIMAL WELFARE ACT

Section
54-901. Act, how cited.
54-902. Terms, defined.
54-905. Court order for reimbursement of expenses; liability for expenses; lien.
54-906. Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; custody agreement; law enforcement officer; powers; duties; liability.
54-913. Livestock animal seized; hearing to determine disposition and cost; notice; court order; appeal; euthanasia.

54-901 Act, how cited.

Sections 54-901 to 54-913 shall be known and may be cited as the Livestock Animal Welfare Act.

Source: Laws 2010, LB865, § 1; Laws 2013, LB423, § 5.
Effective date September 6, 2013.

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 feed, 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 feed, water, or other care as is reasonably necessary for the livestock animal's health;

(6) Equine means a horse, pony, donkey, mule, or hinny;

(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;

(9) Livestock animal means any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, llamas, or poultry;

(10) Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about any premises owned or occupied by such person; and

(11) 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; Laws 2013, LB423, § 6.
Effective date September 6, 2013.

54-905 Court order for reimbursement of expenses; liability for expenses; lien.

(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 any unreimbursed expenses incurred in conjunction with the care, seizure, 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, seizure, or disposal of a livestock animal. The expenses shall be a lien upon the livestock animal.

Source: Laws 2010, LB865, § 5; Laws 2013, LB423, § 7.
Effective date September 6, 2013.

54-906 Law enforcement officer; warrant authorizing entry upon property; issue citation; seizure of animal and property; custody agreement; law enforcement officer; powers; duties; liability.

(1) A 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.

(2) A 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 or custodian as prescribed in sections 29-422 to 29-429.

(3) A law enforcement officer may specify in a custody agreement the terms and conditions by which the owner or custodian may maintain custody of the livestock animal to provide care for such animal at the expense of the owner or custodian. The custody agreement shall be signed by the owner or custodian of the livestock animal. A copy of the signed agreement shall be provided to the owner or custodian of the livestock animal. A violation of the custody agreement may result in the seizure of the livestock animal.

(4) Any 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. Any livestock animal involved in a violation of section 54-903 or 54-904 shall be subject to seizure. Distribution or disposition shall be made under section 54-913 as the court may direct. Any livestock animal seized under this subsection may be kept

by the law enforcement officer on the property of the owner or custodian of such livestock animal.

(5) A law enforcement officer may euthanize or cause a livestock animal seized or kept pursuant to this section to be euthanized if the animal is severely emaciated, injured, disabled, or diseased past recovery for any useful purpose. The law enforcement officer shall notify the owner or custodian prior to the euthanasia if practicable under the circumstances. An owner or custodian may request that a veterinarian of the owner's or custodian's choosing view the livestock animal and be present upon examination of the livestock animal, and no livestock animal shall be euthanized without reasonable accommodation to provide for the presence of the owner's or custodian's veterinarian when requested. However, attempted notification of the owner or custodian or the presence of the owner's or custodian's veterinarian shall not unduly delay euthanasia when necessary. The law enforcement officer may forgo euthanasia if the care of the livestock animal is placed with the owner's or custodian's veterinarian.

(6) A 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; Laws 2013, LB423, § 8.
Effective date September 6, 2013.

54-913 Livestock animal seized; hearing to determine disposition and cost; notice; court order; appeal; euthanasia.

(1) After a livestock animal has been seized, the agency that took custody of the livestock animal shall, within seven days after the date of seizure, file a complaint with the district court in the county in which the animal was seized for a hearing to determine the disposition and the cost for the care of the livestock animal. Notice of such hearing shall be given to the owner or custodian from whom such livestock animal was seized and to any holder of a lien or security interest of record in such livestock animal, specifying the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such livestock animal was seized. Such publication shall be made after application and order of the court. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court.

(2) If the court finds that probable cause exists that the livestock animal has been abandoned or cruelly neglected or mistreated, the court may:

(a) Order immediate forfeiture of the livestock animal to the agency that took custody of the livestock animal and authorize appropriate disposition of the livestock animal, including sale at public auction, adoption, donation to a suitable shelter, humane destruction, or any other manner of disposition approved by the court. With respect to sale of a livestock animal, the proceeds shall first be applied to the cost of sale and then to the expenses for the care of the livestock animal and the remaining proceeds, if any, shall be paid to the holder of a lien or security interest of record in such livestock animal and then to the owner of the livestock animal;

(b) Issue an order to the owner or custodian setting forth the conditions under which custody of the livestock animal shall be returned to the owner or

custodian from whom the livestock animal was seized or to any other person claiming an interest in the livestock animal. Such order may include any management actions deemed necessary and prudent by the court, including culling by sale, humane disposal, or forfeiture and securing necessary care, including veterinary care, sufficient for the maintenance of any remaining livestock animal; or

(c) Order the owner or custodian from whom the livestock animal was seized to post a bond or other security, or to otherwise order payment, in an amount that is sufficient to reimburse all reasonable expenses, as determined by the court, for the care of the livestock animal, including veterinary care, incurred by the agency from the date of seizure and necessitated by the possession of the livestock animal. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent succeeding thirty-day period, if any, shall be due on or before the tenth day of such period. The bond or security shall be placed with, or payments ordered under this subdivision shall be paid to, the agency that took custody of the livestock animal. The agency shall provide an accounting of expenses to the court when the livestock animal is no longer in the custody of the agency or upon request by the court. The agency may petition the court for a subsequent hearing under this subsection at any time. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise determined and ordered by the court. When all expenses covered by the bond or security are exhausted and subsequent bond or security has not been posted or if a person becomes delinquent in his or her payments for the expenses of the livestock animal, the livestock animal shall be forfeited to the agency.

(3) If custody of a livestock animal is returned to the owner or custodian of the livestock animal prior to seizure, any proceeds of a bond or security or any payment or portion of payment ordered under this section not used for the care of the livestock animal during the time the animal was held by the agency shall be returned to the owner or custodian.

(4) Nothing in this section shall prevent the euthanasia of a seized livestock animal at any time as determined necessary by a law enforcement officer or as authorized by court order.

(5) An appeal may be entered within ten days after a hearing under this section. Any person filing an appeal shall post a bond or security sufficient to pay reasonable costs of care of the livestock animal for thirty days. Such payment will be required for each succeeding thirty-day period until the appeal is final.

(6) If the owner or custodian from whom the livestock animal was seized is found not guilty in an associated criminal proceeding, all funds paid for the expenses of the livestock animal remaining after the actual expenses incurred by the agency have been paid shall be returned to such person.

(7) This section shall not preempt any ordinance of a city of the metropolitan or primary class.

Source: Laws 2013, LB423, § 9.
Effective date September 6, 2013.

ARTICLE 11
LIVESTOCK AUCTION MARKET ACT

54-1158 Terms, defined.

As used in the Livestock Auction Market Act, unless the context otherwise requires:

(1) Accredited veterinarian means a veterinarian duly licensed by the State of Nebraska and approved by the deputy administrator of the United States Department of Agriculture in accordance with 9 C.F.R. part 161 as the regulations existed on September 1, 2001;

(2) Department means the Department of Agriculture;

(3) Designated veterinarian means an accredited veterinarian who has been designated and authorized by the State Veterinarian to make inspections of livestock at livestock auction markets as may be required by law or regulation whether such livestock is moved in interstate or intrastate commerce;

(4) Director means the Director of Agriculture;

(5) Livestock means cattle, calves, swine, sheep, and goats;

(6) Livestock auction market means any place, establishment, or facility commonly known as a livestock auction market, sales ring, or the like, conducted or operated for compensation as an auction market for livestock, consisting of pens or other enclosures, and their appurtenances, in which livestock are received, held, sold, or kept for sale or shipment;

(7) Livestock auction market operator means any person engaged in the business of conducting or operating a livestock auction market, whether personally or through agents or employees;

(8) Market license means the license for a livestock auction market authorized to be issued under the act;

(9) Person means any individual, firm, association, partnership, limited liability company, or corporation; and

(10) 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.

Source: Laws 1963, c. 319, § 2, p. 962; Laws 1993, LB 121, § 340; Laws 1999, LB 778, § 63; Laws 2001, LB 197, § 7; Laws 2013, LB78, § 1.
Effective date September 6, 2013.

54-1160 Repealed. Laws 2013, LB 78, § 23.

54-1161 License required; application for license; contents.

No person shall conduct or operate a livestock auction market unless he or she holds a market license therefor, upon which the current annual market license fee has been paid. Any person making application for a new market license shall do so to the director in writing, verified by the applicant, on a form prescribed by the department, showing the following:

(1) The name and address of the applicant and, if the applicant is an individual, his or her social security number, with statement of the names and addresses of all persons having any financial interest in the applicant and the amount of such interest;

(2) Financial responsibility of the applicant in the form of a statement of all assets and liabilities;

(3) A legal description of the property and its exact location with a complete description of the facilities proposed to be used in connection with such livestock auction market;

(4) The schedule of charges applicant proposes for all services proposed to be rendered; and

(5) A detailed statement of the facts upon which the applicant relies showing the general confines of the trade area proposed to be served by such livestock auction market, the benefits to be derived by the livestock industry, and the services proposed to be rendered.

Such application shall be accompanied by the annual fee as prescribed in section 54-1165.

Source: Laws 1963, c. 319, § 5, p. 964; Laws 1997, LB 752, § 134; Laws 2013, LB78, § 2.
Effective date September 6, 2013.

54-1162 Hearing; notice.

Upon the filing of the application as provided in section 54-1161, the director shall fix a reasonable time for the hearing at a place designated by him or her at which time a hearing shall be held on the proposed location of the livestock auction market. The director forthwith shall cause a copy of such application, together with notice of the time and place of hearing, to be served by mail not less than fifteen days prior to such hearing, upon the following:

(1) All duly organized statewide livestock associations in the state who have filed written requests with the department to receive notice of such hearings and such other livestock associations as in the opinion of the director would be interested in such application; and

(2) All livestock auction market operators in the state.

The director shall give further notice of such hearing by publication of the notice thereof once in a daily or weekly newspaper circulated in the city or village where such hearing is to be held, as in the opinion of the director will give reasonable public notice of such time and place of hearing to persons interested therein.

Source: Laws 1963, c. 319, § 6, p. 964; Laws 2001, LB 197, § 10; Laws 2013, LB78, § 3.
Effective date September 6, 2013.

54-1163 Hearing; determination; factors; issuance of license.

The hearing required by section 54-1162 shall be heard by the director and the State Veterinarian. If the director and the State Veterinarian determine, after such hearing, that the proposed livestock auction market would beneficially serve the livestock economy, the department shall issue a market license to the applicant. In determining whether or not the application should be granted or denied, reasonable consideration shall be given to:

(1) The ability of the applicant to comply with the federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., as amended;

(2) The financial stability, business integrity, and fiduciary responsibility of the applicant;

(3) The adequacy of the facilities described to permit the performance of market services proposed in the application;

(4) The present needs for market services or additional services as expressed by livestock growers and feeders in the community; and

(5) Whether the proposed livestock auction market would be permanent and continuous.

Source: Laws 1963, c. 319, § 7, p. 965; Laws 1999, LB 778, § 66; Laws 2013, LB78, § 4.
Effective date September 6, 2013.

54-1165 License fee; payments; disposition.

Every livestock auction market operator shall pay annually, on or before August 1, a market license fee of one hundred fifty dollars to the department for each livestock auction market operated by him or her, which payment shall constitute a renewal for one year. Fees so paid shall be remitted to the State Treasurer for credit to the Livestock Auction Market Fund for the expenses of administration of the Livestock Auction Market Act.

Source: Laws 1963, c. 319, § 9, p. 966; Laws 1983, LB 617, § 9; Laws 1999, LB 778, § 67; Laws 2001, LB 197, § 11; Laws 2013, LB78, § 5.
Effective date September 6, 2013.

54-1168 Records required; available for inspection.

Every market license holder under the Livestock Auction Market Act shall keep an accurate record of all transactions conducted in the ordinary course of his or her business. Such records shall be available for examination of the director, or his or her duly authorized representative, in respect to a market license issued under such act.

Source: Laws 1963, c. 319, § 12, p. 966; Laws 1999, LB 778, § 68; Laws 2001, LB 197, § 12; Laws 2013, LB78, § 6.
Effective date September 6, 2013.

54-1169 Department; complaint; notice of hearing; process; hearings; findings; suspension or revocation of license.

(1) The department may, upon its own motion, whenever it has reason to believe the Livestock Auction Market Act has been violated, or upon verified complaint of any person in writing, investigate the actions of any market

license holder, and if the department finds probable cause to do so, shall file a complaint against the market license holder which shall be set down for hearing before the director and the State Veterinarian upon fifteen days' notice served upon such market license holder either by personal service upon him or her or by registered or certified mail or telegram prior to such hearing.

(2) The director shall have the power to administer oaths, certify to all official acts, and subpoena any person in this state as a witness, to compel the producing of books and papers, and to take the testimony of any person on deposition in the same manner as is prescribed by law in the procedure before the courts of this state in civil cases. Processes issued by the director shall extend to all parts of the state and may be served by any person authorized to serve processes. Each witness who shall appear by the order of the director at any hearing shall receive for such attendance the same fees allowed by law to witnesses in civil cases appearing in the district court and mileage at the same rate provided in section 81-1176, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness has not been required to attend at the request of any party, but has been subpoenaed by the director, his or her fees and mileage shall be paid by the director in the same manner as other expenses are paid under the Livestock Auction Market Act.

(3) All powers of the director as provided in this section shall likewise be applicable to hearings held on applications for the issuance of a market license.

(4) Formal finding by the director and the State Veterinarian after due hearing that any market license holder (a) has ceased to conduct a livestock auction market business, (b) has been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock, (c) has violated any of the provisions of the Livestock Auction Market Act, or (d) has violated any of the rules or regulations adopted and promulgated under the act, shall be sufficient cause for the suspension or revocation of the market license of the offending livestock auction market operator.

Source: Laws 1963, c. 319, § 13, p. 966; Laws 1981, LB 204, § 95; Laws 1999, LB 778, § 69; Laws 2001, LB 197, § 13; Laws 2013, LB78, § 7.
Effective date September 6, 2013.

54-1170 Director; transcripts; appeal; procedure.

The director shall keep a complete transcript of all proceedings and evidence presented in any hearing under the Livestock Auction Market Act. The applicant for a market license, any protestant formally appearing in the hearing for such market license, the holder of any market license suspended or revoked, or any party to a transfer application may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1963, c. 319, § 14, p. 968; Laws 1988, LB 352, § 95; Laws 2013, LB78, § 8.
Effective date September 6, 2013.

Cross References

Administrative Procedure Act, see section 84-920.

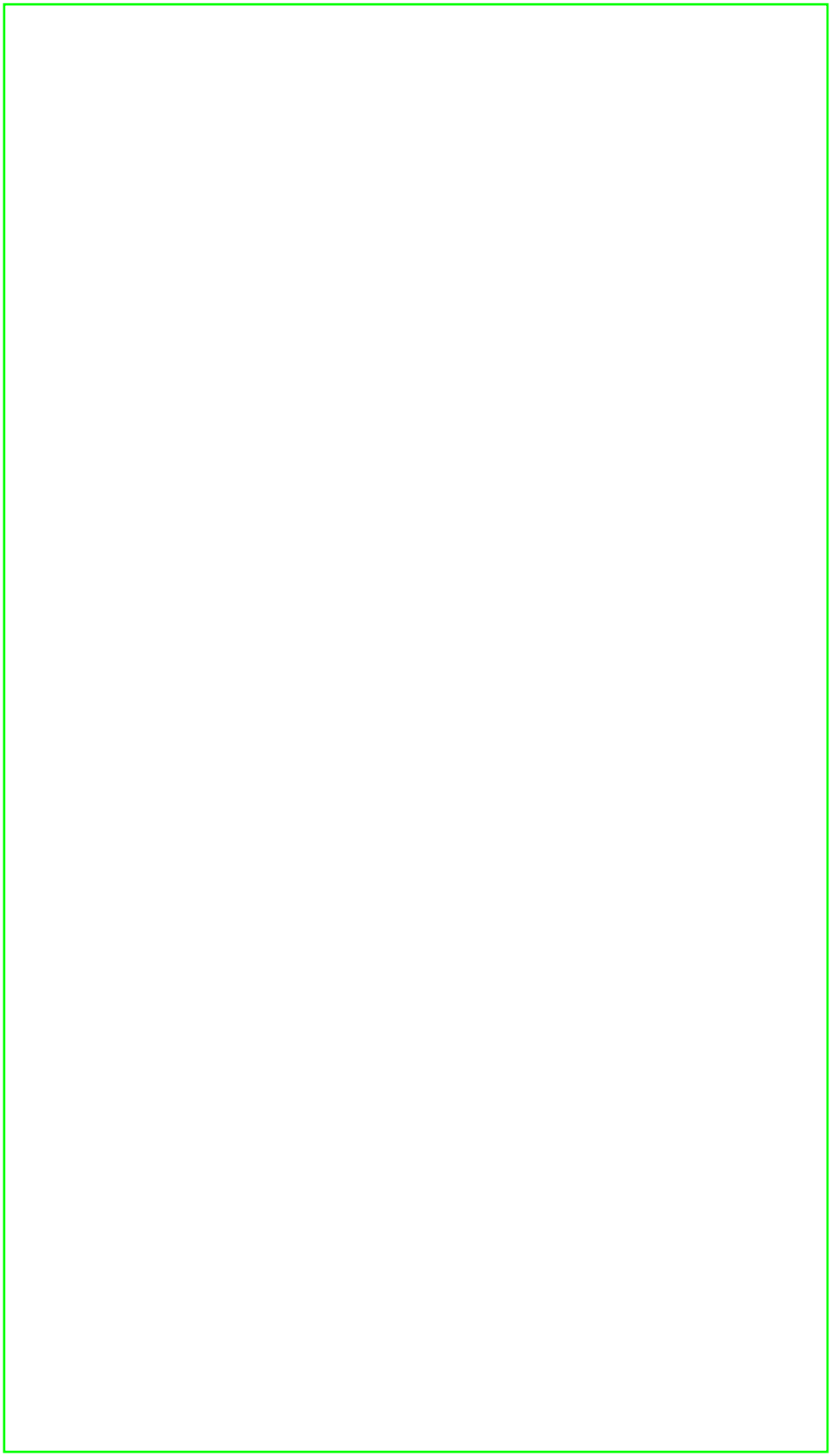
54-1172 Livestock Auction Market Fund; creation; use; investment.

Salaries and expenses of employees, costs of hearings, and all other costs of administration of the Livestock Auction Market Act shall be paid from the Livestock Auction Market Fund which is hereby created. Any money in the Livestock Auction Market 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 1963, c. 319, § 16, p. 969; Laws 1999, LB 778, § 71; Laws 2001, LB 197, § 15; Laws 2013, LB78, § 9.
Effective date September 6, 2013.

Cross References

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



CHAPTER 57
MINERALS, OIL, AND GAS

Article.
14. Major Oil Pipeline Siting Act. 57-1409.

ARTICLE 14
MAJOR OIL PIPELINE SITING ACT

Section
57-1409. Appeal.

57-1409 Appeal.

Any party aggrieved by a final order of the commission regarding an application or assessment under the Major Oil Pipeline Siting Act, including, but not limited to, a decision relating to the public interest, may appeal. The appeal shall be in accordance with section 75-136.

Source: Laws 2011, First Spec. Sess., LB1, § 10; Laws 2013, LB545, § 1. Effective date September 6, 2013.